

Record No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

***IN RE* PETER JOSEPH STRAUSS, JR.**

[Filed UNDER SEAL]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA

PETITION FOR A WRIT OF MANDAMUS

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I. INTRODUCTION

Peter Strauss (“Petitioner” or “Strauss”) petitions this Court for a writ of mandamus to vacate U.S. District Judge Richard M. Gergel’s order, ECF 32 (“Order”), in a criminal case denying Strauss’s motion, ECF 26 (“Motion”), for recusal or disqualification. Strauss, an attorney,¹ timely filed the Motion and provided an affidavit, along with counsel’s certification that it was made in good faith, which sufficiently set forth Judge Gergel’s personal prejudice against Strauss, his personal bias in favor of the U.S. Attorney’s Office (“USAO”), and the appearance of the judge’s lack of impartiality. Judge Gergel ignored the statutory requirements of [28 U.S.C. §144](#) by failing to rule on the sufficiency of said affidavit and failing to assign the Motion to another judge.

In a prior civil proceeding, in disregard of U.S. Supreme Court precedent, Judge Gergel displayed his prejudice against Strauss by threatening to subject him to punishment for asserting his Fifth Amendment rights by reporting him to the South Carolina Supreme Court’s Office of Disciplinary Counsel (“ODC”) for disciplinary action. Judge Gergel instructed Strauss to self-report his assertion of the Fifth Amendment, even though invoking the Fifth Amendment was not an ethical

¹ Strauss’s law license has been suspended.

violation, and Strauss had not committed any illegality in the civil matter. By reporting Strauss to the ODC, Judge Gergel became a material, adverse witness against Strauss. These prior threats and instructions by themselves indicate a deep-seated antagonism that would make fair judgment of Strauss impossible in the case at bar. Judge Gergel further displayed his prejudice against Strauss by concluding and/or implying, in part, that Strauss or his law firm had acted in an illegal, unlawful, surreptitious and dubious manner without any evidentiary support in the record.

Judge Gergel displayed bias towards the USAO during a hearing in which he possessively referenced a prosecutor attending a hearing as “my head of my U.S. Attorney’s Office.” Judge Gergel further displayed his prejudice against Strauss by threatening him with arrest when there was no indication that Strauss would not comply with the judge’s request to attend a hearing. Judge Gergel’s prejudiced comments and conclusions were, in part, based upon his extra-judicial evidentiary investigations and *ex parte* communications, which included visiting Strauss’s law firm website on the internet, researching news articles and repeatedly communicating with a bankruptcy judge about law enforcement and other matters unrelated to the bankruptcy court’s jurisdiction with respect to the civil case. Finally, Judge Gergel completely ignored the opinion of an ethics expert who opined “that the judge should recuse himself from the criminal matter against Mr.

Strauss to avoid the appearance of impropriety.” The totality of the above circumstances demonstrates that Judge Gergel’s impartiality might reasonably be questioned by the objective observer. As such, Strauss’s affidavit was sufficient under [28 U.S.C. §144](#), the Order should be vacated and Gergel disqualified, and Strauss’s criminal case should be remanded to a different judge for sentencing. In the alternative, the Order should be vacated and the case remanded to a different judge to rule on the Motion. Unless a writ of mandamus issues, Strauss will be without a remedy due to the fact that he has waived appeal of conviction and sentencing as part of his plea agreement.

II. PROCEDURAL HISTORY

The complaint in the prior civil suit was filed on April 23, 2019.² Plaintiffs were investors who generally alleged that they were the owners of \$5,000,000 and that the money had been transferred to Strauss Law Firm on December 18, 2018 without proper authorization. They generally sought return of the money and/or an accounting. An initial hearing was held on May 6, 2019, and a second hearing was held on May 9, 2019. Strauss attended the second hearing pursuant to the judge’s

² See *Solar Eclipse Investment Fund XXXV, LLC and East West Bank v. \$5,000,000.00 U.S. Dollars Deposited to IOLTA Account of Strauss Law Firm, LLC in rem, and the Strauss Law Firm, LLC, in personam*, C.A. No. 9:19-cv-1176-RMG (D.S.C.).

verbal order. The \$5,000,000 transfer was a transaction completely separate and distinct from the \$3,000,000 transaction which is the subject of the charge against Strauss and his resulting guilty plea.

On October 17, 2023, the Government filed a one-count Information alleging Strauss violated [18 U.S.C. §§ 2232\(a\)](#) and [2](#) (ECF 2), with respect to a \$3,000,0000 transfer from an account controlled by client Jeff Carpoﬀ to Strauss Law Firm, which occurred on January 15, 2019, and the Plea Agreement (ECF 5) was filed as well.³ According to the docket sheet, on October 27, 2023, Judge Gergel was assigned to this criminal case. On November 6, 2023, a guilty plea hearing was held and Strauss pled guilty to the Information. On December 6, 2023, Strauss filed his Motion for recusal or disqualification and discovery.

III. STANDARD OF REVIEW

A petitioner seeking mandamus relief bears the burden of demonstrating that he has satisfied three requirements. *Cheney v. U.S. Dist. Court*, [542 U.S. 367, 380](#) (2004). First, he must establish there are no other adequate means of obtaining the relief sought. Next, he must prove that his “right to the issuance of the writ is clear and indisputable. *Id.* at 381. Then, even if the petitioner satisfies the first two criteria,

³ See *United States v. Peter J. Strauss*, Criminal No. 9:23-cr-833-RMG (D.S.C.).

“the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* The decision to issue a writ of mandamus “is in large part a matter of discretion with the court to which the petition is addressed.” *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 403 (1976).

IV. ARGUMENTS IN SUPPORT OF A WRIT OF MANDAMUS

- a. Judge Gergel erred when he completely disregarded the statutory requirements of 28 U.S.C. §144 in issuing an order denying Strauss’s motion to recuse him for the criminal sentencing of this case.**

In three material respects, Judge Gergel committed legal error in his assessment of Strauss’s motion to recuse under 28 U.S.C. §144: He failed to adequately consider the plain language of the statute; he conducted a merits inquiry that exceeded the scope of his legitimate review of the sufficiency and timeliness of the motion; and, he failed to find that the affidavit and certificate of counsel submitted in this case were sufficient to justify his recusal and have the Motion transferred to another judge. For these reasons, this Court should vacate his order and find him disqualified from further presiding over Strauss’s criminal case. In the alternative, this Court should vacate his order and remand the case to another judge to rule on the Motion.

- i. Judge Gergel erred when he failed to consider that the plain language of 28 U.S.C. §144 required him to assess only the sufficiency and timeliness of Petitioner’s motion to recuse, accepting all allegations as true.**

Judge Gergel erred when he failed to regard the plain language of 28 U.S.C. §144 in denying Strauss's motion to recuse.

28 U.S.C. §144 provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, **such judge shall proceed no further therein**, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists.... It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. (emphasis added)

Congress unambiguously articulated the requirements for recusal under §144.

So long as any party to the proceeding makes and files a timely and sufficient affidavit which is accompanied by a certificate of counsel attesting the affidavit is made in good faith, that is all that is required under the statute for the judge to end his participation on the case. The reviewing judge, then, has the *limited* authority to determine whether the affidavit is sufficient and whether it is timely. Judge Gergel failed to conduct that inquiry, choosing instead to defend his role in the case and explain how referring Strauss to the ODC for professional misconduct was no remark

on his personal beliefs as to any potential ethical wrongdoing, or how Strauss misinterpreted his threat to have the Marshals arrest him.⁴

Even though Judge Gergel reported Strauss to the ODC and *urged him to do the same*, Judge Gergel claims, in footnote 3 of the Order, that he has “not reached a conclusion concerning whether Strauss committed professional misconduct. ECF 32, p. 15. *But see* South Carolina Rules of Professional Conduct, Rule 8.3(c), Reporting Professional Misconduct: “A lawyer *who knows* that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.” (emphasis added).

⁴ Judge Gergel states that Strauss’s counsel equivocated when asked if Straus would attend the May 9th hearing. But such was not the case, as the record shows:

THE COURT: Mr. Overstreet, do you anticipate any problem having Mr. Strauss appear on Thursday?

MR. OVERSTREET: Your Honor, I will call him when we walk out of this courtroom. My understanding is he was in Hilton Head when we spoke earlier, so I don’t see that—

THE COURT: Let him know that if he seems to have any difficulty getting here, I’m glad to have him escorted by the marshals. ECF 26-1, p. 13.

Judge Gergel interrupted counsel and said he would get the Marshals involved. Counsel did not equivocate. Judge Gergel’s supposition that Strauss was not likely to appear at the hearing willingly was baseless.

Judge Gergel’s decision to report Strauss to ODC and his urging him to do the same would have led a reasonable person to believe that the district court had already concluded Strauss had engaged in professional misconduct and was clearly intimating that Strauss must have also known his conduct was improper.

When engaging in statutory interpretation, this Court will “first and foremost strive to implement congressional intent by examining the plain language of the statute.” *United States v. Passaro*, [577 F.3d 207, 213](#) (4th Cir. 2009). “[A]bsent ambiguity or a clearly expressed legislative intent to the contrary,” this Court must give a statute its “plain meaning.” *United States v. Bell*, [5 F.3d 64, 68](#) (4th Cir. 1993). The plain language of the statute provides the framework for assessing Strauss’s request for the district court judge to be disqualified. Judge Gergel committed legal error in completely disregarding the statute and conducting his assessment of the Motion instead.

- ii. Judge Gergel further erred by conducting a merits analysis of Strauss’s request when he was unauthorized to do so, and when his analysis went far beyond an assessment of the sufficiency and timeliness of the affidavit.**

Judge Gergel’s order defending his role in this case was improper and far exceeded his authority under the statute. In conducting a sufficiency and timeliness inquiry, the district court must assess whether “an affidavit sets forth ‘sufficient’ factual allegations...” *Simonson v. Gen. Motors Corp.*, [425 F. Supp. 574, 577](#) (E.D.Pa.

1976). When a party files a motion and supporting affidavit pursuant to §144, the district court is required to accept the allegations of the movant as true. *Mims v. Shapp*, 541 F.2d 415, 417 (3rd Cir. 1976). “Neither the truth of the allegations nor the good faith of the pleader may be questioned, regardless of the judge’s personal knowledge to the contrary.” *Id.*; *See also Berger v. United States*, 255 U.S. 22, 35 (1921).

To the extent Judge Gergel’s order can be construed as an assessment of the “sufficiency” of Strauss’s affidavit, Judge Gergel further legally erred by not accepting the truth of his allegations, instead suggesting that Strauss’s concerns are baseless because he is “unfamiliar” with legal processes, ECF 32, p. 13 (“the Defendant appeared unfamiliar with how to assert the privilege”) or “misguided,” *id.*, p. 14 (“the Defendant’s objection to the Court’s statement appears to be based on the misguided conclusion that his simple invocation of the (sic) his right to silence prompted the Court’s decision to make a report to the South Carolina Supreme Court”) or is based on his “inexperience in the federal judicial arena.” *id.*, p. 17 (in explaining how Strauss “misinterpreted certain routine court statements, actions and judicial findings in the prior civil case as some form of personal animosity towards him”).

To be clear, Judge Gergel, in this case—having heard no argument and without considering any evidence supporting a conclusion of an ethical violation—reported Strauss to the ODC to have Strauss potentially stripped of his bar license for ethical violations. This courtroom exchange was not “routine court statements or actions” and was not a judicial ruling. This referral would have been abjectly improper unless Judge Gergel committed to his own personal belief that he “knew” that Strauss had committed professional misconduct. And this was no idle threat on the part of the district court. Judge Gergel, in fact, made that referral. *Id.*, p. 15.

Since Judge Gergel denied Strauss’s request for discovery in this matter, and because ODC investigations are confidential, neither undersigned counsel nor Strauss know what Judge Gergel represented to ODC beyond that he must have personally “known” that Strauss committed professional misconduct, the standard under Rule 8.3(c) of the S.C. Rules of Professional Conduct. Judge Gergel was, and is now, an adverse witness against Strauss. It strains credulity why Judge Gergel insists on continuing to preside over this matter as though it were “routine” for federal district court judges to make disciplinary referrals where the judge is also a witness, and then continues to preside over that defendant’s criminal case. Nothing about this situation is “routine” and this Court should vacate Judge Gergel’s Order, disqualify him, and assign Strauss’s case to another judge. A fair trial in a fair tribunal

is a basic requirement of due process. U.S. Const. Amend. V; *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). And the appearance of the impartiality of the judicial branch is critically important to the legitimacy of the courts. *See Mistretta v. United States*, 488 U.S. 361, 407 (“The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.”); *In re Murchison*, 349 U.S. 133, 136 (1955) (“[T]o perform its high function in the best way ‘justice must satisfy the appearance of justice.’”).

Judge Gergel should be disqualified, and he erred in minimizing Strauss’s concern about his continued participation. Judge Gergel committed legal error when he far exceeded his authority under the statute to determine the sufficiency and timeliness of the affidavit and issued an Order dismissing Strauss’s good faith and valid assertions of prejudice, partiality, and the appearance of the same.

iii. Strauss’s affidavit and counsel’s certification of good faith were sufficient under the statute to require Judge Gergel’s recusal.

Strauss met the requirements under 28 U.S.C. §144 when his motion for recusal was filed on December 6, 2023, which incorporates by reference another affidavit submitted to the district court by legal ethics expert, Barbara Seymour. In his affidavit, Strauss set forth sufficient bases upon which he is seeking Judge Gergel’s disqualification. However, Judge Gergel largely disregarded both the fact

of its submission and any analysis of the law relevant to his request as set forth by Ms. Seymour.

Significantly, Ms. Seymour, a well-established expert in legal ethics, concluded Judge Gergel was wrong when he informed Strauss that his invocation of his Fifth Amendment rights was an ethical violation. She alerted Judge Gergel that there is a United States Supreme Court case directly on point—*Spevak v. Klein*, [385 U.S. 511, 514](#) (1967)—that holds “the Self-Incrimination Clause of the Fifth Amendment... extends its protections to lawyers as well as to other individuals, and [] it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.” ECF 26-4, p. 8. She also opined that Judge Gergel’s recusal in this matter is warranted because his impartiality might reasonably be questioned. ECF 26-4, pp. 5-10.⁵

The central requirement under [28 U.S.C. §144](#), Strauss’s affidavit was not afforded the weight it deserved. Strauss’s affidavit, which incorporated Ms. Seymour’s affidavit, carefully enumerated a number of facts that would have led a

⁵ Judge Gergel tries to justify his report of an ethical violation to ODC as the result of an adverse inference which may be made against a party who asserts the Fifth Amendment in a civil case. ECF 32, p. 14. The adverse inference doctrine is not applicable to the recusal analysis. Strauss merely wants to be sentenced by a judge who has not previously wrongfully accused him of ethical and criminal violations and made himself a material, adverse witness against Strauss.

reasonable person to question Judge Gergel's impartiality, including the following:

(1) Judge Gergel's threat to report Strauss to the ODC for invoking the Fifth Amendment (which report was made in violation of Supreme Court precedent and which made the judge a material witness adverse to Strauss); (2) Judge Gergel's prohibition of Strauss's counsel from advising him with respect to the Fifth Amendment; (3) Judge Gergel's threat to arrest Strauss; (4) Judge Gergel's extra-judicial evidentiary investigations including researching Strauss's website and selectively researching newspaper and/or internet articles related to the Carpoffs and their DC Solar companies gave him personal knowledge of disputed evidentiary facts; (5) Judge Gergel's *ex parte* communications with the bankruptcy judge clearly involving matters unrelated to whether the bankruptcy court had jurisdiction over Gergel's civil case and with whom Gergel was "working closely;" (6) Judge Gergel's remarks, that were, in part, based upon evidence obtained through extra-judicial investigations and *ex parte* communications, that implicated Strauss as involved in criminal wrongdoing regarding the \$5,000,000 transaction; and, (7) Judge Gergel's expressed affinity for the USAO prosecutors who were attending the civil hearings. ECF 26-3, 26-4. Given the totality of the circumstances, Judge Gergel's impartiality might be reasonably questioned by an objective observer.

Tellingly, Judge Gergel’s Order failed to even acknowledge the *Spevak* case—controlling authority in this case—even after it was brought to his attention, and he failed to credit, or even acknowledge, an expert opinion that he should recuse himself. Judge Gergel committed an error of law in failing to conduct the proper analysis under 28 U.S.C. §144 and in failing to recuse himself from any further participation in this matter.

- b. Judge Gergel erred in denying Petitioner’s motion to recuse him under 28 USC §§455(a), (b)(1) and 144 because his impartiality might reasonably be questioned under the facts of this case and because he has personal bias and has personal knowledge of facts outside the record and the totality of circumstances indicate he lacked the reasonable appearance of impartiality.**

28 U.S.C. §455 provides, in pertinent part, as follows:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; ...

Section 455(a) requires disqualification even if the judge does not have actual personal bias or prejudice. *See* 13D *Wright and Miller*, Jurisdiction § 3549. Under §455(a), a “federal judge is obliged to recuse himself if a person with knowledge of the relevant facts might reasonably question his impartiality.” *United States v.*

Cherry, [330 F.3d 658, 665](#) (4th Cir. 2003). “If a judge possesses actual or apparent prejudice either for or against a party, federal law provides the aggrieved party with a statutory remedy,” to wit, §455. *Id.*

Under §455(a), even close cases must be resolved in favor of disqualification. *In re Boston’s Children First*, [244 F.3d 164, 167](#) (1st Cir. 2001); *United States v. Evans*, [262 F. Supp. 2d 1292, 1294](#) (D. Utah 2003). Regarding the necessity of recusal, it “is not the reality of bias or prejudice but its appearance” that matters. *Microsoft Corp. v. United States*, [530 U.S. 1310, 1302](#) (2000).

The analysis for recusal, under Sections 144 and 455, other than the affidavit requirements, are similar. “The standard for recusal under [28 U.S.C. §§ 144, 455](#) is ‘whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.’” *United States v. Studley*, [783 F.2d 934, 939](#) (9th Cir. 1986).

Judge Gergel adversely commented on Strauss’s inviolate right to assert the Fifth Amendment in a related civil proceeding. Further, he sought to punish Strauss for asserting these rights by reporting him to the bar in clear violation of U.S. Supreme Court precedent, he further advised Strauss to self-report his Fifth Amendment invocations to the ODC, and he became a material witness adverse to Strauss. Judge Gergel threatened to have Strauss escorted to a court hearing by the

U.S. Marshal's Service when there were no indications he would not comply with his request to attend a quickly scheduled hearing. Judge Gergel also expressed personal prejudice towards Strauss and personal bias in favor of the USAO. Also, Judge Gergel sought and obtained personal knowledge of facts outside the current and former legal proceedings which will likely influence his ability to be impartial in this case. Under the unusual facts of this case, Judge Gergel's impartiality might reasonably be questioned, and his recusal is required.

As noted by ethics expert Seymour in her Affidavit, in her opinion, "the judge should recuse himself from the criminal matter against Mr. Strauss to avoid the appearance of impropriety." ECF 26-4 at p. 5. In her Affidavit, *id.* at p. 5-6, ethics expert Seymour further points out as follows:

A federal judge should recuse himself from a sentencing hearing in a criminal case when there is a reasonable appearance of personal bias, even if the judge believes he can be impartial. This is a fundamental principle of judicial ethics and fairness and it helps ensure that the criminal justice system maintains public trust and confidence.

- i. **Judge Gergel's erroneous remarks regarding Strauss's invocation of his rights under the Fifth Amendment were improper and provide a basis to question his appearance of impartiality.**

As noted above, the *Spevack* Court unequivocally held that a witness, including an attorney, has the "**unfettered**" right to "**remain silent**" by asserting Fifth Amendment protections and shall "**suffer no penalty . . . for such silence.**" 385

U.S. at 514 (emphasis added). The U.S. Supreme Court reversed the disbarment of attorney Spevack because the adverse action against him was based upon his assertion of the right to remain silent in a New York disciplinary proceeding. Judge Gergel's reaction to attorney Strauss invoking the Fifth Amendment was as follows:

6	THE COURTROOM DEPUTY: Sir, may I have those
7	documents? Thank you.
8	THE COURT: Mr. Strauss, I'm going to put you on
9	notice that I intend to advise the South Carolina Supreme Court
10	that you took the Fifth Amendment today in a matter involving
11	potential criminal activity, and I would suggest you
12	self-report your appearance here today and your actions.

Judge Gergel obviously concluded Strauss's invocation of the Fifth Amendment was a violation of the ethical duties of an attorney, informed Strauss that he would advise the S.C. Supreme Court of the fact "that you took the Fifth Amendment today," and suggested Strauss self-report the same. Judge Gergel's comments can only be perceived as threatening and were in clear violation of the Supreme Court's holding in *Spevack* that an attorney has an unfettered right to remain silent and cannot suffer any penalty for doing so.⁶

⁶ The "Fifth Amendment ... forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." *Griffin v. California*, 380 U.S. 609, 615 (1965); *Tehan v. United States ex rel. Shott*, 382 U.S. 406 (1966) ("adverse comment by a prosecutor or trial judge" upon a

As opined by ethics expert Seymour, “[i]n fact, it is not professional misconduct for a lawyer to assert Fifth Amendment rights.” ECF 26-4 at p. 7. There is no duty for a judge to report an attorney for disciplinary action, including under the S.C. Rules of Professional Conduct, because the attorney has lawfully asserted the Fifth Amendment right to remain silent.

Any such report of an attorney’s supposed professional misconduct by a judge to the South Carolina ODC, or threat of the same, for invoking the Fifth Amendment, is inconsistent with Supreme Court precedent and the rules of professional responsibility. Such an unfounded report, or threat of the same, necessarily demonstrates a deep-seated and unequivocal lack of impartiality and/or personal animus. At the very least, such a report would reflect that the offending judge’s “appearance of impartiality” is reasonably questioned.

Furthermore, during the May 9th hearing, Judge Gergel instructed Strauss’s lawyer to cease communicating with Strauss while he was on the witness stand. Because Strauss was not experienced in criminal law and was unsure when to assert his constitutional right to remain silent, Strauss’s lawyer had been trying to assist Strauss as to when to invoke the Fifth Amendment. ECF 26-3 at p. 3.

defendant’s failure to testify violates the federal privilege against compulsory self-incrimination).

As noted by ethics expert Seymour, given “that the law is clear that invoking the privilege against self-incrimination is not professional misconduct, the judge’s reaction and response to Mr. Strauss’s refusal to answer certain questions related to his clients’ financial transactions would cause a reasonable defendant concern regarding the judge’s ability to decide his fate in a fair and impartial manner.” ECF 26-4 at p. 8.

Due to Judge Gergel’s comments and perceived threats regarding his assertion of the Fifth Amendment, his becoming an adverse witness against Strauss in reporting an ethical violation to ODC due to the same, as well as the Judge’s prohibition of his counsel from assisting with the invocation of the Fifth Amendment, Strauss likewise reasonably questions the judge’s impartiality towards him.

ii. Judge Gergel additionally engaged in improper extrajudicial investigations and *ex parte* communications that reasonably give rise to questions about his impartiality in this matter.

As a further indication of Judge Gergel’s actual or perceived prejudice against Strauss and/or apparent lack of impartiality during the civil case, it is clear Judge Gergel conducted extra-judicial and *ex parte* investigations and communications and learned material facts which were not in evidence provided by the parties.

Judge Gergel openly acknowledged that he had “been in communication with the Bankruptcy Court,” and spoken to “Judge Beesley” about his bankruptcy

hearings involving the Carpoffs' DC Solar and related companies.⁷ Judge Gergel knew that the \$5 Million transferred to Strauss was not listed in the bankruptcy court as an obligation or liability, and that neither civil plaintiffs were listed as creditors. ECF 26-1 at pp. 11-12. Apparently, Judge Beesley requested that Judge Gergel “do what I can to repatriate these [\$5,000,000] funds[.]” *Id.* He selectively referenced that there were “press accounts” and “dozens of FBI agents circling the Carpoffs' home” at the time of the raid on December 18, 2018. *Id.* at p. 12. On the day the Carpoffs' warrants were executed, he knew that “DC Solar was defunct at that point, literally defunct. The lights were off, the staff was laid off, and all of its accounts were seized by the Federal Government”; that “all accounts of DC Solar had been seized . . . that the Carpoffs' personal accounts had been seized and all the corporations had been seized”; and that “it was in all the newspapers out there.”⁸ ECF 26-2 at pp. 51, 61.

⁷ ECF 26-1 at pp. 9-12. Upon information and belief, former U.S. Bankruptcy Judge Bruce T. Beesley, of the District of Nevada, was, at the time, handling at least one bankruptcy case involving DC Solar or its affiliates. *See In re Double Jump, Inc.*, Case No. 19-50102-BTB (D.Nev.).

⁸ One or more DC Solar entities filed for bankruptcy protection in or around February, 2019, and engaged a nationally recognized professional restructuring advisor to lead the reorganizations.

He knew Judge Beesley held numerous bankruptcy hearings, and that at “every hearing” he “has SEC investigators and FBI agents sitting in the audience.” ECF 26-1 at p. 12. He knew that one day after the \$5,000,000 wire transfer, the “Government has seized every asset they can of the Carpoffs.” *Id.* at p. 10. On April 30, 2019, before any hearing took place, he apparently visited the Strauss Law Firm website in furtherance of his investigation, as was disclosed in ECF 14, at footnote 1, as follows:

¹ The Strauss Law Firm is comprised of four professionals, including at least one attorney and one Certified Public Accountant, and provides “strategic solutions to high-net-worth individuals, families and business owners” with “experience in the legal, tax, insurance, and accounting arenas.” See <http://thetrausslawfirm.com/about> (last visited, Apr. 30, 2019).

Acting like a law enforcement agent, Judge Gergel went outside the record of the civil case to personally investigate and obtain information and evidence that were material “to disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1); *Liteky*, 510 U.S. at 556 (judge must not rely “upon knowledge acquired outside” judicial proceedings nor display “deep-seated and unequivocal antagonism that would render fair judgment impossible”). Prior to the May 6th and May 9th hearings in the civil case, Strauss is unaware of any evidence introduced to the court that included descriptions of press accounts of the Carpoffs’ businesses being raided by law enforcement or FBI agents “circling” their home. There was certainly no

evidence in the record from the parties regarding communications of bankruptcy Judge Beesley.

Canon 3A(4) of the Code of Judicial Conduct for U.S. Judges provides, in part, as follows: “a judge *should not initiate*, permit, *or consider ex parte communications* or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.” (emphasis added) Likewise, Rule 2.9(C) of the American Bar Association’s Model Code of Judicial Ethics also provides as follows: “A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.”

The fact Judge Gergel went outside the record to investigate and obtain evidence in the civil case, and his particular focus on the role that law enforcement played in the Carpoffs’ bankruptcy matters and the news accounts of the FBI’s raids of their home and businesses, leads one in Strauss’s position to reasonably and objectively question the neutrality and impartiality of the Judge. This is particularly true in light of the many comments by Judge Gergel suggesting Strauss participated in the criminal activity of his clients, the Carpoffs, with respect to the \$5,000,000 wire transfer. *Liteky*, 510 U.S. at 545, n. 1 (disqualification warranted when bias or prejudice stem from an extrajudicial source and “result in an opinion on the merits

[of a case] on some basis *other than what the judge learned from his participation in the case.*") (emphasis added).

For instance, during the civil case May 6th and May 9th hearings, Judge Gergel stated or commented as follows:

- “[L]et’s be candid. To the extent [the plaintiff’s counsel’s] hypothesis is correct, *anybody involved in the transaction potentially has criminal implications tied to them* ... [i]f they’re actually involved in converting the funds[.]” Exhibit 2, p. 68, lines 21 - 24 (emphasis added)
- “[I]t appears that the \$5 million *transfer to the Strauss Law Firm is likely an illegal transfer*, and those recipients [to whom the funds were disbursed] are in receipt of funds that should not have gone to them from this fund. ... it was certainly done in a way that appears surreptitious to me.” Exhibit 1, p. 10, lines 17 – 23 (emphasis added)
- “I will say on the record that these [transactions] are not protected, attorney-client privilege. *These transactions appear to be unlawful*. They would not be protected by privilege, and he appears – it’s not quite clear what capacity Mr. Strauss actually received these funds since he’s taking some of the funds himself and putting them in accounts he controls.” Exhibit 1, p. 13, line 20 - p.14, line 1 (emphasis added)
- “I think *it’s looking pretty dubious that they have a right to those funds*, and *particularly under the circumstances* where Skadden Arps [law firm] apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here[.]” Exhibit 1, p. 12, lines 10 – 14 (emphasis added)
- The fund was to purchase mobile solar generators. It wasn’t to pay all these lawyers and captive funds and all of this, and *it was certainly done in a way that appears surreptitious to me*. It’s one day after the Government has seized every asset they can of the Carpoffs. Exhibit 1, p. 10, lines 21 – 24 (emphasis added)

These comments and statements, which erroneously appear to criminally implicate Strauss with respect to the perceived unlawful \$5,000,000 wire transfer, certainly raise an objective, reasonable doubt as to whether Judge Gergel had formed a negative opinion about Strauss and his integrity. These pejorative comments and statements were based, in part, not on “facts introduced or events occurring in the course of the current, or of prior proceedings[.]” *Liteky*, 510 U.S. at 555. When coupled with Judge Gergel’s extra-judicial investigations and *ex parte* communications with respect to the civil case, at a minimum, these comments and statements objectively and reasonably put into question the appearance of his impartiality towards Strauss in the case at bar. As noted by ethics expert Seymour, the “judge’s statements regarding his communications with the bankruptcy judge and his pledge to use the civil case to assist in marshalling assets for the debtors’ creditors would cause a reasonable person to question his impartiality.” ECF 26-4 at p. 9.

iii. Judge Gergel threatened to have Strauss delivered to the courthouse by the United States Marshals Service when there was no objective basis to do so, giving rise to the reasonable belief to question Judge Gergel’s impartiality.

As noted above, a further indication of Judge Gergel’s actual or perceived prejudice against Strauss and/or apparent lack of impartiality, occurred during the May 6, 2019 hearing in the civil case. There was absolutely no indication that Strauss

would not abide by Judge Gergel's instructions or orders for him to attend the May 9th hearing. Threatening to have the U.S. Marshal's Service "escort" Strauss to attend the hearing was simply a euphemism that he would be arrested without a warrant. Such a threat or strong suggestion was not necessary, and serves to underscore, at a minimum, Judge Gergel's perceived prejudice against Strauss, and, at a minimum, makes his appearance of impartiality toward Strauss reasonably questionable.

- iv. **Judge Gergel's overfamiliarity with "his" U.S. Attorney's Office (who were present at these civil hearings when they were not party to the litigation) gave rise to the reasonable belief of bias in favor of that office and against Strauss.**

As noted above, a further indication of Judge Gergel's actual or perceived prejudice against Strauss and/or apparent lack of impartiality during the civil case, Judge Gergel made possessive reference to federal prosecutors attending the May 6, 2019 hearing, stating: "I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row here right now, and *there's a lot of Government interest in all of this.*" ECF 26-1 at p.12, lines 10 - 20 (emphasis added).

While Judge Gergel may have made innocent slips in characterizing the federal prosecutor attending the hearing and the federal prosecutor's office as his, the perception that he has some ownership or close possessive relationship with them certainly raises the specter that his impartiality towards Strauss might reasonably be

questioned. The Judicial Branch and the Executive Branch (*i.e.*, the USAO) are meant to be kept separate under the Constitution. Strauss believes the prosecutor who Judge Gergel was referencing at the hearing as “my head of my U.S. Attorney’s Office” is the same prosecutor who is currently prosecuting Strauss in the case at bar.

Reasonable concerns about impartiality arise because Judge Gergel expressed an indication that he knew that “there’s a lot of Government interest in all of this.” ECF 26-1 at p.12, line 20. Such knowledge of the Government’s interest in the proceedings certainly reinforces the perception that a close relationship exists between the prosecutor, the prosecutor’s office, and the Judge. There are certainly no indications in the docket sheet of the civil case that the USAO received any formal notice of either the May 6th or May 9th hearings, and the Government was not a party in the action or proceedings. Given all these circumstances, in addition to the fact that the current U.S. Attorney was also Judge Gergel’s law clerk for about five years,⁹ Strauss has a legitimate concern that the Judge is biased towards the prosecutors and the USAO and is prejudiced against Strauss.

⁹ <https://www.justice.gov/usao-sc/meet-us-attorney> (“From 2013 to 2017, Boroughs clerked for Judge Gergel, where she worked on a number of high-profile cases”).

As noted by ethics expert Seymour, the “perception of personal bias in this matter is heightened due to the judge’s expressed affinity or affiliation with the federal prosecutor.” ECF 26-4 at p. 8.

At the very least, Strass is justified in reasonably believing there is an objective appearance of the lack of impartiality.

v. The totality of the circumstances warrants Judge Gergel’s recusal from Petitioner’s criminal sentencing hearing.

Judge Gergel has previously held that recusal is appropriate from cases when “the public might reasonably believe there is a lack of impartiality.” *Sanders v. United States*, C.A. No. 2:16-cv-2356-RMG (D.S.C. [Jan. 28, 2020](#)), ECF 54; *Backus v. State of South Carolina*, C.A. No. 3:11-cv-3120; *United States v. Dong*, C.A. No. 2:11-cr-00510-RMG (Sept. 13, 2012), ECF 189.

In the criminal case of *United States v. Dong*, at ECF 189, Judge Gergel recognized that the question of recusal should take into consideration the totality of the circumstances. Judge Gergel stated “recusal was appropriate” pursuant to the provisions of [28 U.S.C. § 455\(a\)](#) on the basis that *under the totality of circumstances* present in this matter *his ‘impartiality might reasonably be questioned.’*” *Id.* (emphasis added)

Ethics expert Seymour opined in her Affidavit, ECF 26-4 at pp. 9-10, as follows:

Canon 3(C)(1) of the Code of Judicial Conduct for U.S. Judges (effective March 12, 2019) states that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned[.]” ... This provision provides an objective standard and does not require a showing of actual bias.

When the factors and circumstances enumerated above are considered in their totality, a reasonable, well-informed observer would objectively question Judge Gergel’s impartiality with respect to Strauss in the case at bar. As opined by ethics expert Seymour, “the judge’s threat to file a disciplinary complaint against Mr. Strauss for asserting his Fifth Amendment rights, in direct contravention of established law; his stated opinions in the civil case that the transactions appeared “‘dubious,’” “‘surreptitious,’” “‘illegal,’” and “‘unlawful;’” and, his language suggesting he is in alliance with the U.S. Attorney combine to raise a reasonable question about his impartiality.” Judge Gergel’s threat to arrest Strauss, his extra-judicial investigations to obtain information and evidence in the civil case, as well as his *ex parte* communications with respect thereto, are additional circumstances which, when taken in their totality, reasonably raise a question as to Judge Gergel’s impartiality towards Strauss.

c. Judge Gergel’s Order reflects the continued impropriety of his presiding over Strauss’s criminal case.

Remarks made in Judge Gergel’s Order denying Strauss’s motion for recusal provide an additional basis upon which a reasonable person might question the

court's impartiality. With regards to Strauss's invocation of his Fifth Amendment rights at the May 9, 2019 hearing, as noted above, Judge Gergel failed to address controlling United States Supreme Court caselaw that Strauss cannot be punished *in any manner* for that conduct, caselaw that was expressly provided to him in Ms. Seymour's affidavit. Instead of addressing this important legal issue, in his Order Judge Gergel *speculates* that perhaps Strauss was "uncomfortable to admit that exercising his right to silence required him to acknowledge that his responses to questions regarding transactions to and from his law firm's trust account might tend to incriminate him in the commission of a crime." ECF 32, p. 13. Respectfully, this remark is entirely improper and mischaracterizes what occurred in Judge Gergel's courtroom.

Strauss was called to a hastily called court hearing to testify by Judge Gergel a mere three days after the initial civil hearing. Though his civil attorneys were present, his recently retained criminal defense counsel was unable to be present for the hearing. It is not "routine" that Strauss, then a civil witness, believed he needed the services of a criminal lawyer because the judge remarked that he found his conduct involved a "likely illegal transfer," "appeared to be unlawful," that it was "dubious" that others received the funds, and that it was "done in a way that appears surreptitious," but Judge Gergel's remarks made it clear that Strauss needed

counsel's assistance. ECF 26, pp. 17-18. Then, Judge Gergel told Strauss he would file a grievance against him because he believed it was warranted because of the exercise of his Fifth Amendment right. Judge Gergel's order characterizes this as nothing more than "routine court statements, actions, and judicial findings." ECF 32, p. 31. Threatening a witness in a civil matter to have that witness arrested, and reported to the bar due to a perceived ethical violation, are far from "routine" and Judge Gergel's continued minimizing of his conduct during that hearing raises serious issues as to his bias and prejudice against Strauss. At a minimum, it raises the specter of a lack of impartiality.

It is also deeply concerning that Judge Gergel fails to acknowledge how threatening it would be to a litigant to have the judge presiding over his criminal case be the same judge who threatened to have him arrested by the Marshal's Service. This is especially true when, viewing the situation in the most charitable light to Judge Gergel, the judge misconstrued counsel's statement that he was going to call his client to inform him of an upcoming court hearing as some equivocation that Strauss was not preparing to attend the hearing.

Judge Gergel also fails to recognize that conducting his own investigation into these events could lead a person to question his impartiality in Strauss's case. Judge

Gergel made it abundantly clear at the May 6, 2019 hearing that he thought there was criminal activity afoot as he painted a picture for everyone in the courtroom:

I think it's looking pretty dubious that they [the law firms who received money from the Carpoff's] have a right to those funds, and particularly under the circumstances where Skadden Arps apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here, that there has been—I mean, the press accounts, there were dozens of FBI agents circling the Carpoff's home. Judge Beasley tells me that every hearing he has, he has SEC investigators and FBI agents sitting in the audience and I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row right here now, and there's a lot of Government interest in all of this.

ECF 27, p. 12.

Judge Gergel's investigation clearly went beyond his “inspect[ing] the public filings in the Nevada bankruptcy proceeding.” ECF 32, p. 15. And this extrajudicial investigation and these *ex parte* communications with the bankruptcy court are not acceptable simply because “[n]o party to the civil action questioned the accuracy of the Court's reference to the earlier national media reports or requested evidence to be placed in the record to confirm such reports.” ECF 32, p. 17.

It is not the duty of litigants to police members of the federal judiciary when Canon 3A(4) of the Code of Judicial Conduct for U.S. Judges expressly provides that such conduct is improper: “a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.”

Moreover, significant questions remain—just how did the USAO attorneys know to be present for these hearings since the Government was not a party to the litigation? What is full the extent of Judge Gergel’s investigations and *ex parte* communications? What representations did Judge Gergel make to ODC? Because Judge Gergel denied Strauss the opportunity to conduct discovery, it appears these questions will not be answered.

Judge Gergel’s Order on Strauss’s Motion to recuse provides additional support for Strauss’s claim that Judge Gergel should not preside over his criminal case. He minimizes to the point of triviality very valid concerns Strauss has with Judge Gergel’s conduct, including improperly seeking to have Strauss punished for invoking his rights under the Fifth Amendment, and he has done so by characterizing Strauss, a member of the bar for nearly 20 years and the owner of a law firm and separate business, as “inexperienced,” “misguided,” and generally naïve. But critically, Judge Gergel’s order fails to recognize that, by filing his complaint with ODC in which he necessarily would have committed to his personal belief that Strauss committed professional misconduct because that is what the rule requires, he has placed himself in an adversarial posture towards Strauss because he most assuredly is a material witness in that investigation. It is hard to conceive of events that could more strikingly raise the specter of a lack of impartiality, especially when

Judge Gergel, not content to potentially strip Strauss of his bar license, now insists on also imposing his criminal sentence.

To maintain the appearance of impartiality in this criminal case, this Court should vacate Judge Gergel's Order, disqualify him, and remand this case for re-assignment to another district court judge for sentencing. In the alternative, this Court should vacate Judge Gergel's Order, and remand this case for re-assignment to another district court judge to rule on the Motion to recuse. *In re Federal Deposit Ins. Corp.*, [835 F. 2d 874](#) (1987) (holding Judge Blatt should have recused himself and providing him with an opportunity to do so before formally issuing the writ).

V. CONCLUSION

For all the reasons set forth above, Strauss's petition for mandamus should be granted.

[Signatures next page]

Respectfully submitted,

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Dated this 27th day of December, 2023.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral arguments, signature block, certificates of counsel, addendum, attachments):

[X] this brief contains 7,652 words.

2. This brief document compiles with the typeface and type style requirements because:

[X] this brief contains has been prepared in a proportionally spaced typeface using *Microsoft Word* in *14pt Equity*.

Dated: December 27, 2023.

/s/ Elizabeth Franklin-Best

CERTIFICATE OF SERVICE

Counsel hereby certifies that she has sent a copy of this Petition for a Writ of Mandamus to the Honorable Richard M. Gergel, District Court Judge, by sending it through the US Mail, prepaid postage first-class on this date, December 27, 2023 to the address listed on the official court website to:

The Honorable Richard M. Gergel
U.S. District Judge
P.O. Box 835
Charleston, South Carolina 29402

Counsel also certifies she has served the US Attorney's Office on this date, by sending through the US Mail, prepaid postage first-class on this date, December 27, 2023 at the following:

U.S. Attorney
District of South Carolina
Attn: Criminal Process Clerk
Attn: Asst. U.S. Attorney Emily Limehouse
151 Meeting Street, Suite 200
Charleston, South Carolina 29401

/s/ Elizabeth Franklin-Best

**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 BEAUFORT DIVISION**

United States of America,)	
)	
vs.)	Criminal No. 9:23-833-RMG
)	
Peter J. Strauss,)	
)	
Defendant.)	ORDER
)	
_____)	

This matter comes before the Court on Defendant’s motion to recuse. (Dkt. No. 26). Defendant asserts that the Court’s findings and comments made on the record in an earlier, related civil proceeding mandate the Court’s voluntary recusal or disqualification. The motion is made pursuant to [28 U.S.C. §§ 144](#) and [455](#) and the Due Process Clause of the Fifth Amendment. The criminal case before the Court involves a charge that the defendant, Peter J. Strauss (“Strauss”), knowingly transferred and aided and abetted the transfer of funds on behalf of clients to avoid lawful seizure orders of the United States. The previous civil case involved allegations that these same clients had converted funds provided by an investor to their own personal use and then passed those funds through the trust account of Strauss’ law firm to be distributed to other persons and entities for the clients’ benefit. Defendant pled guilty before the Court to the pending criminal charge on November 6, 2023, and he moved to recuse on December 6, 2023. For reasons set forth below, the motion is denied.

Factual Background

It is important at the outset to understand the complex factual setting of the original civil action that came before the Court involving Defendant’s law firm and the alleged use of its trust account to facilitate the transfer of funds converted by clients of the firm, Jeff and Paulette Carpoﬀ,

(the “Carpoffs”). The Carpoffs were principals of a company, DC Solar, which manufactured and promoted as investments solar powered generators that could provide emergency power on an environmentally sustainable basis. Most notably, purchasers of the solar powered generators qualified for a generous tax credit, and DC Solar generated hundreds of millions of dollars in investments. Among these investors was East West Bank, a California state-chartered bank.

On December 17, 2018, the East West Bank transferred \$13 million to Solar Eclipse Investment Fund XXXV (“the Fund”), which was an entity used to purchase solar powered generators from DC Solar. The Fund was one of many related entities under the control of the Carpoffs. Unknown to the East West Bank, DC Solar and the Carpoffs were at that time under federal criminal investigation for operating a Ponzi scheme and money laundering operation. One day after the East West Bank made its \$13 million dollar payment to the Fund, December 18, 2018, federal agents executed search warrants on the Carpoffs’ residence and business operations. The Government also issued seizure orders seeking to take control of all accounts associated with DC Solar and the Carpoffs. These law enforcement activities were widely reported in the press.

The day after law enforcement searched their residence and businesses, December 19, 2018, the Carpoffs wired \$5 million from the Fund’s bank account to the trust account of Strauss Law Firm. A day later, on December 20, 2019, \$2 million of those funds were transferred out of the Strauss Law Firm trust account to another law firm to pay for the Carpoffs’ future legal services. By December 28, 2019, another \$2 million of those funds were transferred out of the trust fund of Defendant’s law firm, again for the personal use and benefit of the Carpoffs. By February 1, 2019, all of the \$5 million transferred by the Carpoffs to the Strauss Law Firm trust account on December 19, 2018 had been wired to others for the personal benefit of the Carpoffs.

DC Solar filed for bankruptcy in Nevada on February 3, 2019, and the Carpoiffs were removed from control over many of the investment accounts related to DC Solar, including the Fund, where the East West Bank had transferred its \$13 million. On March 13, 2019, the Chief Restructuring Officer of DC Solar informed the East West Bank that \$5 million of its investment funds had been improperly transferred by the Carpoiffs to the trust account of the Strauss Law Firm. (C.A. No. 9:19-1176, Dkt. No. 9-2 at 4).¹ Counsel for East West Bank communicated with Strauss by letter dated March 22, 2019, informing him that the funds which the Carpoiffs had transferred to his trust account had been “fraudulently obtained and disbursed.” (*Id.* at 8-9). Counsel for East West Bank asked Strauss for an accounting of these funds and details about disbursements and authorizations provided. Strauss responded by email on March 25, 2019, claiming that the funds transferred into his accounts were the lawful property of DC Solar and that further details should be sought from the bankruptcy trustee for DC Solar. (*Id.* at 10). On March 26, 2019, East West Bank counsel requested from Strauss information concerning his law firm’s role in these illicitly obtained funds. (*Id.* at 11). Strauss provided no response to this second letter.

Strauss received additional correspondence from the newly appointed manager of the Fund, Curtis Jung, on April 9, 2019, stating that it appeared that the transfer of the funds to his law firm’s trust account was improper. Jung asked for further details of the circumstances under which the law firm’s trust fund received the funds and demanded the return of the \$5 million. Noting that “time is of the essence,” Jung demanded a response by April 12, 2019. (C.A. No. 9:19-1176, Dkt. No. 9-3 at 6). Strauss responded by email on April 10, 2019, without providing any details

¹ Citations to the civil case docket will be identified by reference to the civil action number, 9:19-1176. All references to the criminal case docket will simply refer to the docket number.

regarding the circumstances surrounding the receipt or disbursement of the \$5 million and referred all communications to the DC Solar bankruptcy trustee. (*Id.* at 7).

East West Bank and the Fund filed suit against the Strauss Law Firm on April 23, 2019, seeking an accounting and return of the \$5 million and the issuance of a preliminary injunction and temporary restraining order (“TRO”) relating to any funds still in the Strauss Law Firm’s trust account. (C.A. No. 9:19-1176, Dkt. No. 1). Plaintiffs attached supporting documents to their motion. (C.A. No. 9:19-1176, Dkt. Nos. 9-2, 9-3). The Court issued a TRO on April 30, 2019, directing that none of the funds related to the \$5 million be transferred from the Strauss Law Firm trust account and prohibiting the destruction of any relevant records. In granting the TRO, the Court noted the highly “fungible” nature of funds transferred to the law firm’s trust account and made a finding that Plaintiffs “are likely to succeed on the merits” of their claims that the Carpoffs had improperly transferred the funds one day after they “became the target of a federal raid related to a money laundering investigation.” The Court set a hearing on Plaintiffs’ motion for a preliminary injunction for May 6, 2019. (C.A. No. 9:19-1176, Dkt. No. 14 at 6). The Strauss Law Firm filed a response to the motion for preliminary injunction indicating the \$5 million at issue had already been transferred out of the firm’s trust account. The Strauss Law Firm further asserted that the “subject funds implicate[]” the DC Solar bankruptcy, which, if true, would require a stay of the current civil action before the Court. (C.A. No. 9:19-1176, Dkt. No. 21 at 2).

Immediately before the May 6, 2019 hearing, counsel for the Strauss Law Firm produced records detailing the wire transfer of the \$5 million into the law firm’s trust account and nine separate wire transfers out to persons and entities for the personal benefit of the Carpoffs. Counsel for the Strauss Law Firm appeared at the hearing but informed the Court he lacked knowledge regarding many of the critical details related to the receipt and disbursement of the \$5 million.

(Dkt. No. 26-1 at 3-4, 6-7). The Court advised the parties that it would schedule another hearing three days hence, on May 9, 2019, and directed that Strauss appear at that time and “produce all the documents related to the instructions he received for these transfers.” (*Id.* at 11). The Court asked the Strauss Law Firm’s counsel whether he anticipated any problem having Strauss appear for the May 9, 2019 hearing. The law firm’s counsel responded by indicating he would “call him when we walk out of the courtroom,” which the Court viewed as an equivocal response. The Court, making it clear its directive for Defendant to appear was an order, not a suggestion, stated: “Let him know that if he seems to have difficulty getting here, I’m glad to have him escorted by the marshals.” (*Id.* at 13).

The Court addressed at the May 6, 2019 hearing the Strauss Law Firm’s assertion in its May 3, 2019 response that this dispute was subject to the DC Solar bankruptcy action and, thus, to the automatic stay issued by the Nevada Bankruptcy Court. The Court informed counsel that it had checked the publicly available filings of the DC Solar bankruptcy action on the ECF and did not see any listing for the \$5 million transferred to the Strauss Law Firm. To show proper respect for the jurisdiction of the bankruptcy court, the Court made contact with the presiding bankruptcy judge to determine whether there might be a claim that these apparently converted funds by the Carpoiffs were part of the DC Solar bankruptcy estate. The bankruptcy judge indicated that further factual development on the issue might be necessary but for now the Court was encouraged to continue its efforts to repatriate the funds and then sort out later their relationship, if any, to the bankruptcy estate. The Court fully disclosed these discussions with the Nevada bankruptcy court at the May 6, 2019 hearing and indicated the Court would continue to consider the issue of whether the Court’s action was subject to the bankruptcy court’s stay. (*Id.* at 11-12).

Following the conclusion of the May 6, 2019 hearing, the Court extended the TRO to

the nine recipients of the funds transferred from the Strauss Law Firm trust account and ordered that they not disburse or expend any of these funds until further order of the Court. The Court further ordered Strauss to appear at a hearing on May 9, 2019. (C.A. No. 9:19-1176, Dkt. No. 25).

Strauss appeared at the May 9, 2019 hearing. By this time, the Court had received sufficient documentary evidence to support the conclusion that the Carpoffs had unlawfully seized investment funds from the Fund that had been provided by East West Bank and that the Strauss Law Firm's trust account had been utilized to transfer these converted funds to nine different persons or entities for the benefit of the Carpoffs. Many details regarding these transfers were then unknown, and it appeared that Strauss was the most promising source of information to bring clarity to this situation.

The Court initially sought to question Strauss about the receipt and disbursement of the funds transferred to his law firm's trust account by the Carpoffs. Strauss declined to answer any of the Court's questions relating to these funds on Fifth Amendment grounds, indicating that his responses might tend to incriminate him. (Dkt. No. 26-2 at 9-10). Plaintiffs' counsel requested the Court allow her to question Strauss in more detail, noting that in a civil proceeding the assertion of the Fifth Amendment right against self-incrimination by a witness casts a negative inference. The Court allowed Plaintiffs' counsel to ask additional questions and Strauss repeatedly asserted his Fifth Amendment right against self-incrimination. (*Id.* at 11-32).

The record at this point provided strong support for Plaintiffs' claims that the Carpoffs had unlawfully seized and converted investment funds, and the trust account of the Strauss Law Firm had been used to improperly transfer these converted funds to others for the benefit of the Carpoffs. The quick sequence of the arrival and dispersal of these funds through the Strauss Law Firm trust account shortly after the federal law enforcement seizure operation cast further suspicion regarding

these transactions. Thus, when Strauss appeared at the May 9, 2019 hearing and asserted his Fifth Amendment right against self-incrimination, a substantial question was raised from the totality of facts before the Court concerning whether Strauss, a member of the South Carolina Bar, had engaged in professional misconduct. Consequently, the Court placed Strauss on notice that “I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity” and suggested that Strauss self-report his actions to the South Carolina Supreme Court.

The Court issued an order on May 13, 2019, finding that Plaintiffs had demonstrated a likelihood of success on the merits that the \$5 million investment had been unlawfully converted by the Carpoffs for their personal use after they became the target of a federal raid related to a money laundering investigation. The Court enjoined all recipients of the transfers from the Strauss Law Firm trust account from transferring or expending these funds until further order of the Court. (C.A. No. 9:19-1176, Dkt. No. 36). The Court also issued a text order on June 20, 2019 inviting the parties and the DC Solar bankruptcy trustee to brief the issue of whether the pending civil action was stayed by the Nevada bankruptcy court’s automatic stay. (C.A. 9:19-1176, Dkt. No. 47).

The Court addressed in an order dated July 3, 2019 the issue of whether the \$5 million converted by the Carpoffs was part of the DC Solar bankruptcy estate and, thus, subject to the bankruptcy court’s stay. The Court noted that the DC Solar filing of unsecured creditors did not list the \$5 million transferred to the Strauss Law Firm, and the DC Solar bankruptcy trustee had concluded that the funds were not part of the DC Solar bankruptcy estate. The Court, after reviewing the full record in this matter, concluded that “the \$5,000,000 wire transfer of December 19, 2018, made one day after the federal government seized all known accounts of the Carpoffs

and related entities, was an unlawful conversion of the Fund’s assets for the personal use of the Carpoffs and was not an asset of the DC Solar bankruptcy estate.” (C.A. No. 9:19-1176, Dkt. No. 56 at 4).

After the flurry of activity surrounding the issue of preliminary injunctive relief, the Court’s civil action progressed at a less intense pace.² Meanwhile, the conduct of the Carpoffs and Strauss became the subject of formal criminal proceedings. On January 22, 2020, the United States Attorney for the Eastern District of California filed a Felony Information charging Jeff and Paulette Carpoff with various financial crimes. Two days later, on January 24, 2020, both Carpoffs pled guilty. Jeff Carpoff was sentenced on November 9, 2021 to 30 years in prison and was ordered to pay restitution in excess of \$790 million. (C.A. No. 2:20-17, Dkt. Nos. 11, 53 (E.D. Cal.)). Paulette Carpoff was sentenced on June 28, 2022 to a little over 11 years in prison and was ordered to pay over \$660 million in restitution. (C.A. No. 2:20-18, Dkt. Nos. 11, 51 (E.D. Cal.)).

Strauss was charged under a Felony Information on October 17, 2023 related to the transfer of funds from Jeff Carpoff for the purpose of preventing or impairing the Government’s efforts to seize the Carpoffs’ assets. Strauss pled guilty before the Court on November 6, 2023 and agreed as part of a plea agreement to pay \$2.7 million in restitution. Defendant filed his motion to recuse a month later, on December 6, 2023. (Dkt. Nos. 2, 5, 24, 26).

Legal Standard

Two federal statutes address the recusal or disqualification of a federal district judge. 28 U.S.C. § 144 prohibits a district judge from presiding in a case where the judge “has a personal bias or prejudice” against a party. 28 U.S.C. § 455 provides for the disqualification of a judge “in

² The parties in the civil action ultimately reached a negotiated settlement and the case was dismissed.

which his impartiality might reasonably be questioned” or where a judge has a “personal bias or prejudice concerning a party.” § 455(a), (b)(1). Any disqualification of a judge based on an appearance of impartiality must be considered from the perspective of a reasonable person fully informed of all the “surrounding facts and circumstances.” *Microsoft v. United States*, 530 U.S. 1301, 1302 (2000) (Rehnquist, CJ).

Federal district judges routinely handle criminal cases in which the judge may have previously handled related criminal or civil proceedings. These previous civil or criminal proceedings often result in judicial findings and statements related to the facts presented in the pending criminal case before the court. The United States Supreme Court squarely addressed in *Liteky v. United States*, 510 U.S. 540 (1994), the very limited circumstances in which previous judicial findings or statements by a trial judge in related civil or criminal cases can be the basis for judicial recusal or disqualification. The *Liteky* court stated that prior judicial rulings “almost never constitute a valid basis for a bias or partiality motion.” *Id.* at 555. The Court went on to state:

[O]pinions formed by a judge on the basis of facts introduced, or events occurring in the course of current proceedings, or prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion derives from an extrajudicial source, and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.

Id.

The Fourth Circuit addressed the issue of judicial disqualification based on a judge’s involvement in a prior civil or criminal proceeding in *Belue v. Leventhal*, 640 F.3d 567 (4th Cir. 2011). The Fourth Circuit stated that the case law firmly established that “parties would have to meet a high bar” to achieve recusal based on comments by a trial judge in the current or previous

proceeding. To meet that high bar, the judge's comments must involve "singular and startling facts" that reflect "particularly egregious conduct." *Id.* at 573. To allow any other rule, the Fourth Circuit noted, would produce "limitless gamesmanship" and would invite "a form of brushback pitch for litigants to hurl at judges who do not rule in their favor." This would make litigation "even more time-consuming and costly than it is and do lasting damage to the independence and impartiality of the judiciary." *Id.* at 574.

Discussion

Defendant asserts in an affidavit that "I believe in good faith that Judge Gergel has a personal bias against me and in favor of the U.S. Attorney's Office, and that Judge Gergel's impartiality might reasonably be questioned." (Dkt. No. 26-3 at 1). Defendant referenced various findings and statements by the Court in the previous civil case to support his personal belief of judicial bias. The Court addresses these challenged statements and findings below.

- A. Defendant's objection to the Court's comments at the May 6, 2019 hearing that the transfer of funds by the Carpoffs to his law firm's trust account was "likely an illegal transfer" and "these transactions appear to be unlawful."

The Court conducted a hearing on Plaintiffs' motion for a preliminary injunction on May 6, 2019, following the receipt of records that indicated that one day after federal law enforcement officers raided the Carpoffs' home and business sites they transferred to the trust account of Strauss' law firm \$5 million dollars that had been deposited in an investment fund by the East West Bank to purchase solar generators. The record indicated that these funds were quickly wired to others for the personal benefit of the Carpoffs. (C.A. No. 9:19-1176, Dkt. No. 25 at 2-3). The manager of the investment fund from which these monies were seized and transferred by the Carpoffs had advised Strauss that the transfers were unauthorized and demanded their prompt return to the Fund. Based on these facts and many others, the Court made the following statement:

From the information I have, it appears that the \$5 million transfer to the Strauss Law Firm is likely an illegal transfer, and those recipients are in receipt of funds that should not have gone to them from this fund. The fund was to purchase mobile solar generators. It wasn't to pay all these lawyers and captive funds and all of this, and it was certainly done in a way that appears surreptitious to me. It's one day after the Government has seized every asset they can of the Carpoffs.

(Dkt. No. 26-1 at 10).

The Court issued orders on April 30, 2019 and May 13, 2019 which included findings consistent with the challenged statement. These statements and findings are exactly the type of prior judicial actions that are not a proper basis for a judicial recusal motion. Further, later developments in this and other cases have validated the accuracy of the Court's challenged statements and findings.

B. The Court's reference to the local United State's Attorney's Office staff as "my U.S. Attorney's Office."

During the May 6, 2019 hearing, counsel for the Strauss Law Firm sought to characterize the transfers into the firm's trust account as ordinary transactions involving clients of the law firm, the Carpoffs. The inference was that the Plaintiffs were overreacting and that there was nothing particularly remarkable about these fund transfers into and out of the Strauss Law Firm trust account. The Court noted the intensive law enforcement interest in these transactions, with numerous federal law enforcement officers sitting in the courtroom. This suggested to the Court that close scrutiny of these transactions was appropriate. The reference to "my U.S. Attorney's Office" was simply a shorthand reference to the fact that these particular transactions were receiving scrutiny from the United States Attorney's Office for the District of South Carolina and did not reflect any endorsement of actions of the United States Attorney's office.

C. The Court's statement that it would, if necessary, send the United States Marshal to escort Defendant to the May 9, 2019 hearing.

Prior to the morning of the May 6, 2019 hearing, Plaintiffs had repeatedly attempted, without success, to obtain from Strauss an accounting of the \$5 million that the Carpoffs had transferred to his law firm's trust account. On the morning of the May 6, 2019 hearing, Plaintiffs were provided by the Strauss Law Firm's counsel a listing of the persons and entities which had been the recipients of the \$5 million from the firm's trust account. Plaintiffs still had no details regarding who had authorized the transfers of investment funds to persons and entities for the personal benefit of the Carpoffs. During the May 6, 2019 hearing, it was apparent that counsel for the Strauss Law Firm had little knowledge concerning these missing details. The Court noted the need to summon Strauss to a hearing on May 9, 2019 to address these unanswered questions. The Court asked counsel for the Strauss Law Firm whether he anticipated any problem having Strauss appear at the May 9, 2019 hearing. Rather than assure the Court his client would be present, the law firm's counsel indicated he would have to call his client to determine his availability. The Court interpreted this response as equivocating on whether Mr. Strauss would appear as directed by the Court, which prompted the Court's statement to the law firm's counsel: "Let him know that if he seems to have any difficulty getting here, I'm glad to have him escorted by the marshals." (Dkt. No. 26-1 at 13). This statement was for the purpose of making it clear that the command to be present on May 9, 2019 was an order, not a suggestion.

The Court regards this statement, while perhaps stern, as an unambiguous assertion of the Court's authority to compel the attendance of a witness, an essential element of the orderly administration of justice. This statement reflected no personal hostility toward Strauss, only the Court's resolve that he was to appear on May 9, 2019. The challenged statement is the very type of a "judge's ordinary efforts at courtroom administration" that is not a proper basis for judicial recusal. *Liteky*, [510 U.S. at 556](#).

- D. The Court's statement that Defendant needed to state that his assertion of his Fifth Amendment right was based on the fact that his answers might tend to incriminate him.

The Court initially questioned Strauss at the May 9, 2019 hearing. He promptly attempted to invoke his right to silence by stating that “[o]n advice of counsel, I have to invoke my Fifth Amendment privilege.” (Dkt. No. 26-2 at 9). Since the Defendant appeared unfamiliar with how to assert the privilege, the Court explained that the basis of the assertion of the right to silence under the Fifth Amendment was that the witness’s responses may tend to incriminate him. It was not sufficient to invoke the privilege simply because his attorney told him to do this. After explaining the full scope of the rule, the Court asked the Defendant whether he was “asserting the Fifth Amendment right because your response may tend to incriminate you.” The Defendant then responded “[y]es, your honor.”

The Court provided Strauss an accurate explanation of the elements necessary to assert the right to silence under the Fifth Amendment. Perhaps Defendant found it uncomfortable to admit that exercising his right to silence required him to acknowledge that his responses to questions regarding transactions to and from his law firm’s trust account might tend to incriminate him in the commission of a crime. The Defendant’s discomfort with the elements of the assertion of his Fifth Amendment right to silence is hardly the basis for judicial recusal.

- E. The Court's statement that “I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity”

Defendant objects to the Court’s statement that it intended to report to the South Carolina Supreme Court his invocation of his Fifth Amendment right against self-incrimination “in a matter involving potential criminal activity.” (Dkt. No. 26-2 at 33). The Court’s statement followed significant record evidence that Defendant’s law firm had received \$5 million dollars from the

Carpoffs one day after their home and offices had been raided by federal law enforcement officials and these funds were rapidly transferred from the trust account of the Strauss Law Firm to third parties for the benefit of the Carpoffs. When asked under oath by the Court of his knowledge regarding the details of these transactions, Strauss invoked his Fifth Amendment rights on the grounds that his responses might incriminate him.

After considering the totality of circumstances in the record then before the Court, there was a substantial question whether Defendant had engaged in professional misconduct in violation of the South Carolina Rules of Professional Conduct. South Carolina Appellate Court Rule 407, Rule 8.3(c) imposes a duty on every licensed attorney to report actions by an attorney that raise a substantial question concerning another attorney's professional misconduct.

Defendant appears to argue that his invocation of his right against self-incrimination immunized him from a judge reporting to the South Carolina Supreme Court facts that raised a substantial question of professional misconduct. This misapprehends the application of the assertion of the right against self-incrimination. Where a defendant asserts his right to silence under the Fifth Amendment, that fact may not be used against him in a criminal trial. However, the invocation of the Fifth Amendment right against self-incrimination can cast an adverse inference in a civil proceeding. *Michael v. United States*, 526 U.S. 314, 328 (1999).

The Defendant's objection to the Court's statement appears to be based on the misguided conclusion that his simple invocation of his right to silence prompted the Court's decision to make a report to the South Carolina Supreme Court. The complete statement of the Court was that Strauss was put on notice that "I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today *in a matter involving potential criminal activity*." (Dkt. No. 26-2 at 33) (emphasis added). This "potential criminal activity" raised a substantial question of whether

Strauss had committed professional misconduct regarding the operation of his law firm's trust account. The fact that Struss asserted his Fifth Amendment right against self-incrimination did not immunize him from a judicial report of possible professional misconduct.³

Strauss was not the first attorney that the Court has reported to the South Carolina Supreme Court where a substantial question has been raised whether the attorney has engaged in professional misconduct. Judges have an important duty, as do all licensed attorneys, to uphold the integrity and professionalism of the Bar. Such a report is not a valid basis for judicial recusal.

F. Defendant's contention that the Court's review of the public docket in the DC Solar bankruptcy case and communication with the Nevada bankruptcy judge constituted an *ex parte* communication and an independent investigation by the Court.

The defense asserted in the civil case that the Plaintiffs' suit was stayed by the pending bankruptcy proceeding of DC Solar. Since this matter went to the jurisdiction of the Court over this pending matter, the Court took the assertion seriously to determine whether the bankruptcy court's stay applied to the funds transferred from the Fund, an entity separate and independent from DC Solar. As is routine when such bankruptcy related matters arise on the Court's docket, the Court inspected the public filings in the Nevada bankruptcy proceeding, which were available a few clicks away on the ECF. The Court found no reference to the \$5 million transfer from the investment fund on the unsecured creditors listed in the DC Solar bankruptcy.

The Court was, however, sensitive to the prerogatives of a sister court and reached out to the Nevada bankruptcy court to avoid any unnecessary conflict or miscommunication regarding the scope of the DC Solar bankruptcy estate. Such communications are commonly made by the

³ The Court has not reached a conclusion at this time concerning whether Strauss committed professional misconduct regarding transactions made on behalf of the Carpoiffs from his law firm's trust account. This is a matter that should first be addressed by the South Carolina Supreme Court.

Court and received from other federal and state judges. Indeed, the Manual for Complex Litigation published by the Federal Judicial Center recommends communications between courts in complex litigation to promote judicial efficiency and to avoid unnecessary duplication. *See* Manual for Complex Litigation §§ 10.12, 20.2 (Federal Judicial Center 2004).

The Court's review of the publicly available records of the DC Solar bankruptcy docket was part of routine federal court practice, as were the communications with the Nevada bankruptcy court. The Court fully disclosed these communications to counsel and there was no suggestion or concern expressed at that time that such communications were anything but routine. Court to court communications or inspection of publicly available court records are not a valid basis for judicial recusal.

G. The Court's reference to widespread news reports of the federal government's law enforcement activities at the Carpoiffs' residence and businesses.

When the civil action was filed in April 2019, there had been months earlier a great deal of news coverage concerning the FBI's raid of the residence and businesses of the Carpoiffs on December 18, 2018.⁴ The substance of the news coverage from the past December was well known to the parties, the Court, and anyone else who had a passing interest in current affairs. The record before the Court contained the critical details relevant to the civil case and was far more detailed than the cursory news reports that had been made around the time of the federal government's enforcement action. What was relevant regarding the news reports was not the substance of the reports but whether they had provided notice to the Strauss Law Firm of the

⁴ *E.g.*, "FBI Raids Home of DC Solar CEO," ESPN Website (December 20, 2018); "FBI Conducts Raid on DC Solar's Headquarters, CEO's Home," NBC Sports Website (December 20, 2018); "How an FBI Raid Indirectly Led to a NASCAR Team Shutting Down," USA Today Website (January 5, 2019). The Carpoiffs' prominent role as a sponsor of a NASCAR team generated a great deal of media interest in the federal government's enforcement activities.

federal enforcement action before the \$5 million was wired out of the law firm's trust account to others for the benefit of the Carpoffs.

No party to the civil action questioned the accuracy of the Court's reference to the earlier national media reports or requested evidence to be placed in the record to confirm such reports. Had such a request been made, the Court would have taken judicial notice of the earlier news reports because they could be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Federal Rule of Evidence 201(b)(2). The late complaint about the Court's reference to the previously undisputed news reports does not provide a basis for recusal.

Defendant, in his affidavit, does not dispute the widespread national news reports concerning the raid on the Carpoff's home, but complains that the Court failed to quote statements by Carpoff's lawyers that the raid was merely a "tax dispute" and the Carpoffs "planned to grow their business." (Dkt. No. 26-3 at 5). By the time the case was filed in April 2019, DC Solar was in bankruptcy and it was apparent that this was far more than a "tax dispute." The Court's failure to quote a statement of the Carpoffs' lawyer in December 2018 during the hearings in May 2019 would certainly not be a basis for recusal.

- H. The Defendant is mistaken in his belief that the Court harbors any personal bias or animosity toward him or favors the Government in his pending criminal case.

The Defendant, perhaps due to his personal inexperience in the federal judicial arena, has misinterpreted certain routine court statements, actions, and judicial findings in the prior civil case as some form of personal animosity towards him. The pending criminal case before the Court, in which Defendant has pled to a single felony count, is a fairly routine matter on the Court's docket. The Court's statements and orders in the prior civil case reflected a determination, first, to

determine the facts, and then, upon determining that there had most probably been an improper conversion of funds by the Carpooffs, to move expeditiously to repatriate the funds so that the Plaintiffs might have an effective remedy for the wrong they had suffered. The Court will approach Defendant's sentencing, as it does in every sentencing, with a careful review of the presentence report, including the calculation of the sentencing guidelines, and consideration of all objections, arguments of counsel, and evidence offered in mitigation. The Court's goal is to impose a sentence with is "sufficient but not greater than necessary" to accomplish the purposes of the law. The Court's prior handling of the related civil case or consideration of this motion to recuse will have no bearing on the Court's sentencing decision.

Conclusion

After a careful view of the full record in the prior civil proceeding and in this pending criminal matter, consideration of the motion for recusal and attachments, and the applicable case law, the Court finds that there is no reasonable basis to question the impartiality of the Court based upon a reasonable person standard with full knowledge of all facts and circumstances. 28 U.S.C. § 455(a). The Court further finds that, applying the same standard, there is no valid basis for recusal or disqualification on the grounds of personal bias. 28 U.S.C. §§ 144, 455(b)(1). Consequently, the Defendant's motion to recuse or disqualify (Dkt. No. 26) is denied.⁵

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

December 11, 2023
Charleston, South Carolina

⁵ The Defendant's motion also contained a request to conduct discovery. The Court finds no basis or need to conduct discovery and that motion is also denied.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

United States of America,)	Criminal Action No.: 9:23-cr-833-RMG
)	
v.)	
)	
Peter J. Strauss,)	Filed Under Seal Per Court Order
)	
Defendant.)	
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**DEFENDANT’S MOTION FOR RECUSAL OR DISQUALIFICATION AND
DISCOVERY, AND MEMORANDUM IN SUPPORT**

The Defendant, Peter J. Strauss (“Strauss” or “Defendant”), by and through his undersigned counsel, hereby respectfully moves (the “Motion”) the Honorable Richard M. Gergel to recuse or disqualify himself from this case. The Motion includes a request for discovery. The Motion is respectfully made pursuant to [28 U.S.C. §§ 144 and 455](#), and the Due Process Clause of the Fifth Amendment. This Motion is filed under seal pursuant to Court Order. ECF # 10.

I. PROCEDURAL HISTORY

On October 12, 2023, Defendant executed a plea agreement with the United States Government (“United States” or “Government”), by and through the U.S. Attorney’s Office for the District of South Carolina (“USAO”), agreeing to plead guilty to a violation of [18 U.S.C. §§ 2232\(a\) and 2](#).

On October 17, 2023, the Government filed a motion to seal (ECF # 1), a one-count Information alleging a violation of [18 U.S.C. §§ 2232\(a\) and 2](#) (ECF # 2), a Penalty Sheet (ECF # 3) and the Plea Agreement (ECF # 5).

On November 3, 2023, U.S. District Judge Richard M. Gergel (“Judge Gergel”) granted the motion to seal. ECF # 10.

On November 6, 2023, in a hearing before Judge Gergel, Strauss pleaded guilty to the said one-count Information.

The parties await the issuance of a Pre-Sentence Report (“PSR”) from the United States Probation Office, and a sentencing hearing is not yet scheduled.

Strauss continues to cooperate with the USAO.

II. FACTUAL BACKGROUND

Defendant Strauss is an attorney and had a law practice, Strauss Law Firm, LLC (“SLF” or “Strauss Law Firm”) that operated on Hilton Head Island, South Carolina, for approximately 15 years. The Strauss Law Firm is now closed. Strauss Law Firm’s focus included captive insurance, estate planning, tax planning and corporate law. Strauss also operated a captive insurance management company, Hamilton Captive Management, LLC (“Hamilton”), which managed over hundred captive insurance companies for clients from across the United States.¹

Around 2015, Jeffrey Carpoﬀ, a purported billionaire, became a captive insurance client of Strauss and Hamilton. Carpoﬀ had founded a company which purportedly manufactured mobile solar-powered generators. Carpoﬀ’s company, DC Solar Solutions, Inc. (“DC Solar”), generally promised investors federal income tax credits from its solar equipment and lease payments from the leases of thousands of its mobile solar generators. Ultimately, DC Solar proved to be a giant Ponzi scheme and a fraud upon its investors. Unknown to Strauss and DC

¹ Captive insurance companies are wholly-owned subsidiaries of operating businesses that self-insure risks of the parent business pursuant to Internal Revenue Code § 831(b) and 806. Hamilton was founded in 2012 to provide turn-key services for middle market captive clients, including evaluating captive opportunities (underwriting, risk assessment and actuarial reports); captive insurance formation (design, drafting and executing of participation agreement, share issuance, directors resolution and service agreement); captive insurance management (policy design, banking/financial reporting, regulatory compliance, claims administration, legal/regulatory guidance); and reinsurance facilitation (risk pooling of separate captives through reinsurance provider).

Solar's investors, most of the purported mobile solar generators did not exist, and investors in DC Solar's lease programs were being paid from new investors' money and not from lease payments.

Through 2018, Strauss was only generally aware of the nature of Carpoﬀ's business, and was completely unaware of the frauds that Carpoﬀ had been committing with DC Solar. During this time, Strauss was mainly providing Carpoﬀ (and his wife) captive insurance services, and assistance with personal real estate investments, estate planning and life insurance. Strauss hoped to develop and operate a Family Office for the Carpoﬀs.

On December 18, 2018, a search warrant was executed by federal law enforcement on Carpoﬀ's California residence and business office.

On December 19, 2018, unknown to Strauss, Carpoﬀ's wife, Paulette, arranged a wire transfer of \$5,000,000 to the SLF trust account. Later that day, after this money was wired to SLF's trust account, Strauss was contacted by the national law firm Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), primarily through partner Armando Gomez ("Gomez"), and instructed to wire \$2,000,000 to Skadden for a retainer deposit.

From: "Gomez, Armando" <Armando.Gomez@skadden.com>
Date: December 19, 2018 at 3:23:57 PM EST
To: "pstrauss@thetrausslawfirm.com" <pstrauss@thetrausslawfirm.com>
Subject: Wire instructions

Peter,

Further to our discussion a short while ago, I understand that Jeff Carpoﬀ has asked you to arrange a wire to Skadden for a retainer. The wire can be sent to Citibank at the following instructions:

CITIBANK, N.A.
399 Park Avenue
NEW YORK, NY 10022

ABA #: [REDACTED]
Swift Code: [REDACTED] (required for international wires only)
FOR CREDIT TO:
ACCOUNT [REDACTED] of Skadden, Arps, Slate, Meagher & Flom LLP

My business address and contact information is set forth below. Once the wire has been sent, please send me the wire details so that we can confirm receipt. Thank you.

Armando Gomez
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W. | Washington | D.C. | 20005-2111
T: 202.371.7868 | F: 202.661.8284 | M: 703.819.1788
armando.gomez@skadden.com

Skadden

Skadden attorneys, including Gomez, Annie Li, Van Durrer and Jack DiCanio, and/or the Carpoﬀs, continued to direct Strauss and SLF to disburse money to various other professionals, including other lawyers and bankruptcy consultants for the Carpoﬀs and their companies.

On December 28, 2018, pursuant to Carpoﬀ’s instructions, Deltec, his bank in Nevis, wired \$3,000,000 from his DC Solar International, Inc. (“DC Solar International”) account to Port Royal Insurance Company for partial payment of his captive insurance company premiums of \$4,500,000 which were due to Hamilton at the time.

On January 15, 2019, pursuant to Carpoﬀ’s instructions, Deltec, his bank in Nevis, wired another \$3,000,000 from his DC Solar International account to the SLF trust account. This \$3,000,000 was used, *inter alia*, to pay for SLF attorney’s fees which were due at the time, and other professional fees and captive insurance commutation fees.

On April 23, 2019, Solar Eclipse Investment Fund XXXV (“Fund 35”) and East West Bank (“EWB”) filed a complaint in federal court against the \$5,000,000, *in rem*, in the SLF trust account which was wired on December 19, 2018, and against Strauss Law Firm, *in personam*.² The complaint generally alleged that the plaintiffs owned the \$5,000,000, and the money was unlawfully and fraudulently transferred to SLF’s trust account by the FUND 35 manager, Halo Management Services, LLC (“Halo”).³ The complaint contained five causes of action, to wit, (1) a declaratory judgment of the court for its *in rem* control of the remainder of the \$5,000,000 in the SLF trust account; (2) a declaratory judgment that the plaintiffs were entitled to the said

² ECF # 1, *Solar Eclipse Investment Fund XXXV, LLC and East West Bank, Plaintiffs, v. \$5,000,000 U.S. Dollars Deposited to IOLTA Account of the Strauss Law Firm, LLC in rem, and the Strauss Law Firm, LLC, in personam*; Civil Action No. 9:19-cv-01176-RMG (D.S.C.) (the “Fund 35-EWB Case”).

³ Upon information and belief, Halo was controlled by the Carpoﬀs.

remaining funds in the SLF trust account; (3) an accounting from the Strauss Law Firm of all disbursements of the original \$5,000,000; (4) a constructive trust of the remainder of the \$5,000,000 in the SLF trust account; (5) rescission of any agreement authorizing the original transfer of the \$5,000,000 to the SLF trust account; and, (6) injunctive relief enjoining SLF from any further disbursements of the remainder of the \$5,000,000 in the SLF trust account.

On May 6, 2019, Judge Gergel held a hearing in the Fund 35-EWB Case. *See Exhibit 1* (Transcript of 5/6/2019 hearing).⁴ During this hearing, Judge Gergel made the following statements:

[I]t appears that the \$5 million transfer to the Strauss Law Firm is likely an illegal transfer, and those recipients [to whom the funds were disbursed] are in receipt of funds that should not have gone to them from this fund. ... it was certainly done in a way that appears surreptitious to me. *Id.* at p. 10, lines 17 - 23.

I'[m] going to order Mr. Strauss into the Court here, and I'm going to order him to produce all the documents related to the instructions he received for these transfers. *Id.* at p. 11, lines 4 - 7.

I think it's looking pretty dubious that they have a right to those funds, and particularly under the circumstances where Skadden Arps [law firm] apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here, that there has been -- I mean, the press accounts, there were dozens of FBI agents circling Carpoffs [Mr. Strauss's clients'] home. Judge Beasley tells me that every hearing he has, he has SEC investigators and FBI agents sitting in the audience, and I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row here right now, and there's a lot of Government interest in all of this. *Id.* at p. 12, lines 10 - 20.

Let him [Strauss] know that if he seems to have any difficulty getting here, I'm glad to have him escorted by the marshals. *Id.* p. 13, lines 8 - 10.

These transactions appear to be unlawful. They would not be protected by privilege, and he appears -- it's not quite clear what capacity Mr. Strauss actually received these funds since he's taking some of the funds himself and putting them in accounts he controls. *Id.* at p. 13, line 22 - p. 14, line 1.

⁴ All cited Exhibits and Affidavits are attached hereto and incorporated herein by reference.

On May 9, 2019, Judge Gergel held another hearing in the Fund 35-EWB Case. *See Exhibit 2* (Transcript of 5/9/2019 hearing). During this hearing, Strauss asserted the Fifth Amendment in response to many questions posed to him by the judge and counsel for the plaintiffs. Judge Gergel made the following statement as a result:

Mr. Strauss, I'm going to put you on notice that I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity, and I would suggest you self-report your appearance here today and your actions.” *Id.* at p. 33, lines 8 - 12.

Judge Gergel made this statement while contemporaneously recognizing the criminal implications regarding the transactions relating to the \$5,000,000. *Id.* at p. 68, lines 21 – 24.

Defendant Strauss submits an affidavit (Exhibit 3) in support of this Motion that he believes in good faith that Judge Gergel has a personal bias against him and in favor of the USAO, and that Judge Gergel’s impartiality is reasonably questioned.

This Motion is further supported by an affidavit (Exhibit 4) and expert opinion by attorney Barbara Seymour, an ethics expert and the former Deputy Disciplinary Counsel of the South Carolina Office of Disciplinary Counsel. As set forth in more detail below, Ms. Seymour concludes that it “is my expert opinion . . . that the judge should recuse himself from the criminal matter against Mr. Strauss to avoid the appearance of impropriety.” *Id.* at 5.

III. LAW

The Motion is made pursuant to 28 U.S.C. §§ 144 and 455(a) and (b)(1), and the Due Process Clause of the Fifth Amendment to the United States Constitution.

28 U.S.C. § 455 provides, in pertinent part, as follows:

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; ...

28 U.S.C. § 144 provides as follows:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Section 455(a) requires disqualification even if the judge does not have actual personal bias or prejudice. *See* 13D *Wright and Miller*, Jurisdiction § 3549.

Under § 455(a), a “federal judge is obliged to recuse himself if a person with knowledge of the relevant facts might reasonably question his impartiality.” *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003). “If a judge possesses actual or apparent prejudice either for or against a party, federal law provides the aggrieved party with a statutory remedy,” to wit, § 455. *Id.*

Under § 455(a), even close cases must be resolved in favor of disqualification. *In re Boston’s Children First*, 244 F.3d 164, 167 (1st Cir. 2001); *United States v. Evans*, 262 F. Supp. 2d 1292, 1294 (D. Utah 2003). Regarding the necessity of recusal, it “is not the reality of bias or prejudice but its appearance” that matters. *Microsoft Corp. v. United States*, 530 U.S. 1310, 1302 (2000).

Likewise, Courts have recognized that the Code of Judicial Conduct mandates recusal even if there is only an appearance of impropriety or partiality. *Microsoft Corp. v. United States*, 253 F.3d 34, 114-15 (D.C. Cir 2001) (“The very purpose of § 455(a) is to promote confidence in

the judiciary by avoiding even the appearance of impropriety whenever possible . . . Appearance may be all there is, but that is enough to invoke the Canons [of Judicial Conduct] and § 455.”); Code of Judicial Conduct, Canon 2A (“A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”) As noted by the Fifth Circuit Court of Appeals in *Potashnick v. Port City Const. Co.*, [609 F.2d 1101, 1111](#) (5th Cir. 1980):

This overriding concern with appearances, which also pervades the Code of Judicial Conduct and the ABA Code of Professional Responsibility, stems from the recognized need for an unimpeachable judicial system in which the public has unwavering confidence.... Any question of a judge’s impartiality threatens the purity of the judicial process and its institutions.

In applying § 455, “it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public’s confidence in the judicial process.” *Liljeberg v. Health Servs. Acquisition Corp.*, [486 U.S. 847, 864](#) (1988). If a judge fails to recuse himself when the statute required recusal, even a final judgment can be reopened. *Id.* at 863-64.

While critical or hostile judicial comments or remarks during a proceeding or prior proceeding do not necessarily require recusal, judicial comments against a party are grounds for recusal if “they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Liteky v. United States*, [510 U.S. 540, 556](#) (1994). There is no requirement that biased comments or prejudiced opinions justifying recusal arise from an extrajudicial source. *Id.* at 555 (“neither the presence of an extrajudicial source necessarily establishes bias, nor the absence of an extrajudicial source necessarily precludes bias;” extrajudicial source is simply a “factor” to be considered). However, biased judicial comments or prejudiced opinions derived from extrajudicial sources are a proper basis for recusal. *Sales v. Grant*, [158 F.3d 768, 781](#) (4th

Cir. 1998) (biased judicial remarks may support a recusal challenge “if they reveal an opinion that derives from an extrajudicial source”).

A judge should also disqualify himself in circumstances where “he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1); *Sine v. Local No. 992 Int’l Bhd. of Teamsters*, 882 F.2d 913, 914 (4th Cir. 1989).

The standard to determine impartiality is an objective test requiring a judge to disqualify himself whenever his impartiality might reasonably be questioned. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge’s impartiality, not whether the judge is in fact impartial. *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987) (recognizing the right to petition the appellate court for a writ of mandamus in the event a judge fails to recuse, and holding the “proper test to be applied is whether another with knowledge of all of the circumstances might reasonably question the judge’s impartiality.”). Disqualification is required “if a person with knowledge of the relevant facts might reasonably question [the judge’s] impartiality.” *Cherry*, 330 F.3d at 665.

The standard for recusal under 28 U.S.C. § 144 is the same as under § 455, to wit, ““whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.”” *Mayes v. Leipziger*, 729 F.2d 607 (9th Cir. 1984); *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

The Due Process Clause of the Fifth Amendment also mandates a requirement of judicial impartiality, and, like Section 455(a), has been implemented by an objective standard that does

not require proof of actual bias.⁵ *United States v. Liggins*, No. 22-1236, 2023 U.S. App. LEXIS 20040 (6th Cir. Aug. 3, 2023); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883-87 (2009) (due process analysis of recusal under the Fourteenth Amendment); *Aiken County v. BSP Div. of Envirotech Corp.*, 866 F.2d 661, 678 (4th Cir. 1989) (“The due process clause protects not only against express judicial improprieties but also against conduct that threatens the ‘appearance of justice.’”); *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (question is not whether a judge harbors an actual bias but whether, as an objective matter, there is an unconstitutional potential for bias).

Like the statutory bases for recusal, the Due Process Clause looks at the totality of the circumstances as to whether recusal is constitutionally required. *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (Supreme Court precedents require courts to ask “whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable”). While recusal under Due Process is a higher bar than under the statutes, recusal is required when “the *probability* of actual bias rises to an unconstitutional level.” *Caperton*, 556 U.S. at 887 (emphasis added); *In re Murchinson*, 349 U.S. 133, 136 (1955) (Due Process “may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way ‘justice must satisfy the appearance of justice.’”).

IV. ARGUMENT

With much respect, Judge Gergel should be recused or disqualified from this case. Judge Gergel has adversely commented on the Defendant’s inviolate right to assert the Fifth

⁵ To the extent the Due Process Clause of the Fourteenth Amendment is applicable to a motion to recuse a federal judge, Defendant invokes the same. The due process analysis regarding recusal under both the Fifth and Fourteenth Amendments are the same.

Amendment in a related proceeding. Further, he sought to punish Defendant for asserting such rights by reporting him to the bar in clear violation of U.S. Supreme Court precedent, and he further advised Defendant to self-report his Fifth Amendment invocations to the Office of Disciplinary Counsel. Judge Gergel threatened to have Defendant escorted to a court hearing by the U.S. Marshall's Service when there was no indication Defendant would not comply. Judge Gergel has expressed personal prejudice towards the Defendant and personal bias towards the USAO. Judge Gergel has sought and obtained personal knowledge of facts outside of the current and former legal proceedings which will likely influence his ability to be impartial in this case. Under the totality of the circumstances, Judge Gergel's impartiality *might* reasonably be questioned, and his recusal is mandated.

As noted by ethics expert Seymour in her Affidavit (Exhibit 4 at 5), in her opinion, "the judge should recuse himself from the criminal matter against Mr. Strauss to avoid the appearance of impropriety." In her Affidavit (Exhibit 4 at 5-6) ethics expert Seymour further points out as follows:

A federal judge should recuse himself from a sentencing hearing in a criminal case when there is a reasonable appearance of personal bias, even if the judge believes he can be impartial. This is a fundamental principle of judicial ethics and fairness and it helps ensure that the criminal justice system maintains public trust and confidence. There are several reasons why recusal in such situations is essential:

Judicial Code of Conduct: Federal judges are bound by a Code of Conduct, which outlines their ethical obligations. One of the key principles in this code is that judges must avoid both actual bias and the appearance of bias. This means that judges should not only be impartial but also avoid situations where their impartiality might reasonably be questioned.

Preservation of Judicial Impartiality: The cornerstone of a fair and just legal system is the impartiality of judges. Judges must be seen as unbiased and neutral arbiters who apply the law objectively. This perception of impartiality is crucial to maintain public confidence in the judiciary.

Public Perception: Even if a judge genuinely believes he can be impartial, the perception of bias can undermine the public's trust in the judicial system. If the public believes a judge is personally biased or has a potential conflict of interest, it can erode confidence in the fairness of the proceedings.

Equal Protection Under the Law: The principle of equal protection under the law requires that all individuals receive the same treatment and consideration in court, regardless of their background, status, or the nature of the case. Any hint of bias, even if unintentional, can raise doubts about whether this principle is being upheld.

Fair Trial Rights: In criminal cases, the defendant has a Constitutional right to a fair trial. This includes the right to be judged by an impartial tribunal. If a judge's impartiality is in question due to an appearance of bias, it can infringe upon the defendant's Constitutionally protected fair trial rights.

Avoiding Litigation and Appeals: When a judge's impartiality is questioned and not addressed through recusal, it can lead to prolonged litigation and appeals. This is costly, time-consuming, and may not ultimately result in a just outcome. Recusal can help prevent such complications.

Maintaining the Integrity of the Judiciary: The integrity of the judicial system relies on judges who adhere to the highest ethical standards. Recusal in cases where impartiality might reasonably be questioned is a proactive step to maintain the reputation and credibility of the judiciary.

A. ADVERSE FIFTH AMENDMENT COMMENTS

In the case of *Spevack v. Klein*, 385 U.S. 511, 514 (1967), the U.S. Supreme Court clearly held that a witness, including an attorney, has the “**unfettered**” right to “**remain silent**” by asserting Fifth Amendment protections and shall “**suffer no penalty . . . for such silence.**” (emphasis added) The U.S. Supreme Court reversed the disbarment of attorney Spevack because the adverse action against him was based upon his assertion of the right to remain silent in a New York disciplinary proceeding.

However, after Strauss asserted his right to remain silent pursuant to the Fifth Amendment during the May 9, 2019 hearing in the Fund 35-EWB Case, Judge Gergel reacted with the following:

6 THE COURTROOM DEPUTY: Sir, may I have those
7 documents? Thank you.
8 THE COURT: Mr. Strauss, I'm going to put you on
9 notice that I intend to advise the South Carolina Supreme Court
10 that you took the Fifth Amendment today in a matter involving
11 potential criminal activity, and I would suggest you
12 self-report your appearance here today and your actions.

The Judge obviously decided that Strauss's invocation of the Fifth Amendment was a violation of the ethical duties of an attorney, informed Strauss that he would advise the S.C. Supreme Court of the fact "that you took the Fifth Amendment today," and suggested Strauss self-report the same. Judge Gergel sought to punish Strauss for the assertion of his Constitutional rights, despite the fact that the Judge ascertained that the matter involved "potential criminal activity." The Judge's comments can only be perceived as threatening, and were in clear violation of the Supreme Court's holding in *Spevack* that an attorney has an unfettered right to remain silent and cannot suffer any penalty for doing so.

As the *Spevack* Court noted, "'penalty' is not restricted to fine or imprisonment.... It means ... the imposition of any sanction which makes assertion of the Fifth Amendment privilege 'costly.'" *Id.*, at 515.⁶

The Supreme Court has noted that the Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him or her not to answer official questions put to him or her in any other proceeding,

⁶ The "Fifth Amendment ... forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." *Griffin v. California*, 380 U.S. 609, 615 (1965); *Tehan v. United States ex rel. Shott*, 382 U.S. 406 (1966) ("adverse comment by a prosecutor or trial judge" upon a defendant's failure to testify violates the federal privilege against compulsory self-incrimination).

civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” *Lefkowitz v Turley*, 414 U.S. 70, 77 (1973).

As opined by ethics expert Seymour, “[i]n fact, it is not professional misconduct for a lawyer to assert Fifth Amendment rights.” Exhibit 4 at 7. There is no duty for a judge to report an attorney for disciplinary action, including under the S.C. Rules of Professional Conduct, because the attorney has lawfully asserted the Fifth Amendment right to remain silent.

Any such report of an attorney’s supposed professional misconduct by a judge to the South Carolina Office of Disciplinary Counsel, or threat of the same, for invoking the Fifth Amendment, is inconsistent with Supreme Court precedent and the rules of professional responsibility. Such an unfounded report, or threat of the same, necessarily demonstrates a deep-seated and unequivocal lack of impartiality and/or personal animus. At the very least, such a report would reflect that the offending judge’s “appearance of impartiality” is reasonably questioned.

Furthermore, during the May 9th hearing, Judge Gergel instructed Strauss’s lawyer to cease communicating with Strauss while he was on the witness stand. Because Strauss was not experienced in criminal law and was unsure when to assert his constitutional right to remain silent, Strauss’s lawyer had been trying to assist Strauss as to when to invoke the Fifth Amendment. Exhibit 3 at 3 (Strauss Affidavit).

As noted by ethics expert Seymour, given “that the law is clear that invoking the privilege against self-incrimination is not professional misconduct, the judge’s reaction and response to Mr. Strauss’s refusal to answer certain questions related to his clients’ financial transactions would cause a reasonable defendant concern regarding the judge’s ability to decide his fate in a fair and impartial manner.” Exhibit 4 at 8. Due to Judge Gergel’s comments and

perceived threats regarding his assertion of the Fifth Amendment, as well as the Judge's prohibition of his counsel from assisting with the invocation of the Fifth Amendment, Strauss likewise reasonably questions the judge's impartiality towards him. *See Exhibit 3.*

B. EXTRA-JUDICIAL AND EX PARTE INVESTIGATIONS AND COMMUNICATIONS

As a further indication of Judge Gergel's actual or perceived prejudice against Strauss and/or apparent lack of impartiality during the Fund 35-EWB Case, it is clear that Judge Gergel conducted extra-judicial and *ex parte* investigations and communications and learned material facts which were not in evidence provided by the parties.

Judge Gergel openly acknowledged that he had "been in communication with the Bankruptcy Court," and spoken to "Judge Beesley" about his bankruptcy hearings involving the Carpoiffs' DC Solar and related companies.⁷ Judge Gergel knew that the \$5 Million transferred to Strauss was not listed in the bankruptcy court as an obligation or liability, and that neither Fund 35 nor EWB were listed as creditors. Exhibit 1 at pp. 11-12. Apparently, Judge Beesley requested that Judge Gergel "do what I can to repatriate these [\$5,000,000] funds[.]" *Id.* He selectively referenced that there were "press accounts" and "dozens of FBI agents circling the Carpoiffs' home" at the time of the raid on December 18, 2018. *Id.* at p. 12. On the day the Carpoiffs' warrants were executed, he knew that "DC Solar was defunct at that point, literally defunct. The lights were off, the staff was laid off, and all of its accounts were seized by the Federal Government"; that "all accounts of DC Solar had been seized . . . that the Carpoiffs' personal

⁷ Exhibit 1 at pp. 9-12. Upon information and belief, former U.S. Bankruptcy Judge Bruce T. Beesley, of the District of Nevada, was, at the time, handling at least one bankruptcy case involving DC Solar or its affiliates. *See In re Double Jump, Inc.*, Case No. 19-50102-BTB (D.Nev.).

accounts had been seized and all the corporations had been seized”; and that “it was in all the newspapers out there.”⁸ Exhibit 2 at pp. 51, 61.

He knew that Judge Beesley held numerous bankruptcy hearings, and that at “every hearing” he “has SEC investigators and FBI agents sitting in the audience.” Exhibit 1 at p. 12. He knew that one day after the \$5,000,000 wire transfer, the “Government has seized every asset they can of the Carpoffs.” *Id.* at p. 10. On April 30, 2019, before any hearing took place, he apparently visited the Strauss Law Firm website in furtherance of his investigation, as was disclosed in ECF # 14, at footnote 1, as follows:

¹ The Strauss Law Firm is comprised of four professionals, including at least one attorney and one Certified Public Accountant, and provides “strategic solutions to high-net-worth individuals, families and business owners” with “experience in the legal, tax, insurance, and accounting arenas.” *See* <http://thestrausslawfirm.com/about> (last visited, Apr. 30, 2019).

Clearly, Judge Gergel went outside the record of the Fund 35-EWB Case to personally investigate and obtain information and evidence that were material “to disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1); *Liteky*, 510 U.S. at 556 (judge must not rely “upon knowledge acquired outside” judicial proceedings nor display “deep-seated and unequivocal antagonism that would render fair judgment impossible”). Prior to the May 6th and May 9th hearings in the Fund 35-EWB Case, Strauss is unaware of any evidence introduced to the court that included descriptions of press accounts of the Carpoffs’ businesses being raided by law enforcement or FBI agents “circling” their home. There was certainly no evidence in the record from the parties regarding communications of bankruptcy judge Beesley.

⁸ One or more DC Solar entities filed for bankruptcy protection in or around February, 2019, and engaged a nationally recognized professional restructuring advisor to lead the reorganizations.

Canon 3A(4) of the Code of Judicial Conduct for U.S. Judges provides, in part, as follows: “a judge *should not initiate*, permit, *or consider ex parte communications* or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.” (emphasis added)

While not binding on federal judges, Rule 2.9(C) of the American Bar Association’s Model Code of Judicial Ethics also provides as follows: “A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.”

That fact that Judge Gergel went outside the record to investigate and obtain evidence in the Fund 35-EWB Case, and his particular focus on the role that law enforcement played in the Carpooffs’ bankruptcy matters and the news accounts of the FBI’s raids of their home and businesses, naturally leads one in a position such as Strauss to reasonably and objectively question the neutrality and impartiality of the Judge. This is particularly true in light of the many comments by Judge Gergel suggesting that Strauss participated in the criminal activity of his clients, the Carpooffs, with respect to the \$5,000,000 wire transfer. *Liteky*, 510 U.S. at 545, n. 1 (disqualification warranted when bias or prejudice stem from an extrajudicial source and “result in an opinion on the merits [of a case] on some basis *other than what the judge learned from his participation in the case.*”) (emphasis added).

For instance, during the Fund 35-EWB Case May 6th and May 9th hearings, Judge Gergel stated or commented as follows:

- “[L]et’s be candid. To the extent [the plaintiff’s counsel’s] hypothesis is correct, *anybody involved in the transaction potentially has criminal implications tied to them* ... [i]f they’re actually involved in converting the funds[.]” Exhibit 2, p. 68, lines 21 - 24 (emphasis added)

- “[I]t appears that the \$5 million *transfer to the Strauss Law Firm is likely an illegal transfer*, and those recipients [to whom the funds were disbursed] are in receipt of funds that should not have gone to them from this fund. ... it was certainly done in a way that appears surreptitious to me.” Exhibit 1, p. 10, lines 17 – 23 (emphasis added)
- “I will say on the record that these [transactions] are not protected, attorney-client privilege. *These transactions appear to be unlawful*. They would not be protected by privilege, and he appears – it’s not quite clear what capacity Mr. Strauss actually received these funds since he’s taking some of the funds himself and putting them in accounts he controls.” Exhibit 1, p. 13, line 20 - p.14, line 1 (emphasis added)
- “I think *it’s looking pretty dubious that they have a right to those funds*, and *particularly under the circumstances* where Skadden Arps [law firm] apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here[.]” Exhibit 1, p. 12, lines 10 – 14 (emphasis added)
- The fund was to purchase mobile solar generators. It wasn’t to pay all these lawyers and captive funds and all of this, and *it was certainly done in a way that appears surreptitious to me*. It’s one day after the Government has seized every asset they can of the Carpoffs. Exhibit 1, p. 10, lines 21 – 24 (emphasis added)

These comments and statements, which erroneously appear to criminally implicate Strauss with respect to the perceived unlawful \$5,000,000 wire transfer, certainly raise objective, reasonable doubt as to whether Judge Gergel had formed a negative opinion about Strauss and his integrity. These pejorative comments and statements were based, in part, not on “facts introduced or events occurring in the course of the current, or of prior proceedings[.]” *Liteky*, 510 U.S. at 555. When coupled with Judge Gergel’s extra-judicial investigations and *ex parte* communications with respect to the Fund 35-EWB Case, at a minimum, these comments and statements objectively and reasonably put into question the appearance of his impartiality towards Strauss in the case at bar. As noted by ethics expert Seymour, the “judge’s statements regarding his communications with the bankruptcy judge and his pledge to use the civil case to assist in marshalling assets for the debtors’ creditors would cause a reasonable person to question his impartiality.” Exhibit 4 at 9.

C. UNWARRANTED THREAT OF ARREST

As a further indication of Judge Gergel's actual or perceived prejudice against Strauss and/or apparent lack of impartiality, during the May 6, 2019 hearing in the Fund 35-EWB Case, Judge Gergel indicated that, on three days' notice, he was going to order Strauss to come to court, produce documents and testify.

Judge Gergel then stated as follows:

Let him [Strauss] know that if he seems to have any difficulty getting here, I'm glad to have him escorted by the marshals. Exhibit 1, p. 13, lines 8 - 10.

At this point in the Fund 35-EWB Case proceedings, there was absolutely no indication that Strauss would not abide by Judge Gergel's instructions or orders for him to attend the May 9th hearing. Threatening to have the U.S. Marshall's Service "escort" Strauss to attend the hearing was simply a euphemism that he would be arrested. Such a threat or strong suggestion was not necessary, and serves to underscore, at a minimum, the Judge's perceived prejudice against Strauss. This threat or strong suggestion, at a minimum, certainly makes the Judge's appearance of impartiality toward Strauss reasonably questionable.

D. REFERENCES TO, AND RELATIONSHIP WITH, THE U.S. ATTORNEY'S OFFICE

As a further indication of Judge Gergel's actual or perceived prejudice against Strauss and/or apparent lack of impartiality during the Fund 35-EWB Case, Judge Gergel made possessive reference to federal prosecutors attending the May 6, 2019 hearing. During the said hearing, he stated as follows: "I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row here right now, and *there's a lot of Government interest in all of this.*" Exhibit 1, p.12, lines 10 – 20 (emphasis added).

While Judge Gergel may have made innocent slips in characterizing the federal prosecutor attending the hearing and the federal prosecutor's office as his, the perception that he

has some ownership or close possessive relationship with them certainly raises the specter that his impartiality towards Strauss might reasonably be questioned. The Judicial Branch and the Executive Branch (i.e., the U.S. Attorney's Office) are meant to be kept separate under the Constitution. Upon information and belief, the prosecutor who Judge Gergel was referencing at the hearing as "my head of my U.S. Attorney's Office" is the same prosecutor who is currently prosecuting Strauss in the case at bar.

Reasonable concerns about impartiality arise because Judge Gergel expressed an indication that he knew that "there's a lot of Government interest in all of this." Exhibit 1, p.12, line 20. Such knowledge of the Government's interest in the proceedings certainly reinforces the perception that a close relationship exists between the prosecutor, the prosecutor's office and the Judge. There are certainly no indications in the docket sheet of the Fund 35-EWB Case that the U.S. Attorney's Office received any formal notice of either the May 6th or May 9th hearings, and the Government was not a party in the action or proceedings. Given all these circumstances, in addition to the fact that the current U.S. Attorney was also Judge Gergel's law clerk for about five years,⁹ Strauss has a legitimate concern that the Judge is biased towards the prosecutors and the U.S. Attorney's Office, and is prejudiced against Strauss.

As noted by ethics expert Seymour, the "perception of personal bias in this matter is heightened due to the judge's expressed affinity or affiliation with the federal prosecutor." Exhibit 4 at 8.

At the very least, Strass is justified in reasonably believing there is an objective appearance of the lack of impartiality.

⁹ <https://www.justice.gov/usao-sc/meet-us-attorney> ("From 2013 to 2017, Boroughs clerked for Judge Gergel, where she worked on a number of high-profile cases").

E. TOTALITY OF THE CIRCUMSTANCES

Judge Gergel has previously recused himself from cases when “the public might reasonably believe there is a lack of impartiality.” *Sanders v. United States*, C.A. No. 2:16-cv-2356-RMG (D.S.C. [Jan. 28, 2020](#)), ECF # 54; *Backus v. State of South Carolina*, C.A. No. 3:11-cv-3120; *United States v. Dong*, C.A. No. 2:11-cr-00510-RMG (Sept. 13, 2012), ECF # 189.

In his *sua sponte* order of recusal in the criminal case of *United States v. Dong*, at ECF # 189, Judge Gergel recognized that the question of recusal should take into consideration the totality of the circumstances. In recusing himself, Judge Gergel stated that “the undersigned ... hereby recuses himself pursuant to the provisions of [18 U.S.C. § 455\(a\)](#) on the basis that ***under the totality of circumstances*** present in this matter ***his ‘impartiality might reasonably be questioned.’***” *Id.* (emphasis added)

Ethics expert Seymour opined in her Affidavit ([Exhibit 4](#) at 9-10) as follows:

Canon 3(C)(1) of the Code of Judicial Conduct for U.S. Judges (effective March 12, 2019) states that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned[.]” The Canon goes on to provide some examples of circumstances where such may occur, including “personal bias or prejudice concerning a party[.]” However, the issue of judicial recusal involves more than actual bias and can be required where a judge’s “impartiality might reasonably be questioned.” This is based on an objective standard whether “a reasonable well informed observer” outside the judiciary “might reasonably question [the judge’s] impartiality on the basis of all of the circumstances.” The purpose of this judicial disqualification standard is to preserve public confidence in the integrity and impartiality of the federal judiciary by requiring recusal where there might be a public perception of a lack of impartiality or fairness by a judge sitting in a particular matter. The question of recusal is broader than the issue of personal bias, extending to the potential appearance of partiality and public confidence in the integrity and fairness of the judicial process. The Court’s duty to avoid even an appearance of impartiality must ultimately be decided on an objective standard designed to preserve public confidence in our system of justice. This provision provides an objective standard and does not require a showing of actual bias.

When the factors and circumstances enumerated above are considered in their totality, a reasonable, well-informed observer would objectively question Judge Gergel’s impartiality with

respect to Strauss in the case at bar. As opined by ethics expert Seymour, “the judge’s threat to file a disciplinary complaint against Mr. Strauss for asserting his Fifth Amendment rights, in direct contravention of established law; his stated opinions in the civil case that the transactions appeared “dubious,” “surreptitious,” “illegal,” and “unlawful;” and, his language suggesting he is in alliance with the U.S. Attorney combine to raise a reasonable question about his impartiality.” Judge Gergel’s extra-judicial investigations to obtain information and evidence in the Fund 35-EWB Case, as well as his *ex parte* communications with respect thereto, are additional circumstances which, when taken in their totality, reasonably raise a question as to Judge Gergel’s impartiality towards Strauss. At the very least, in order to avoid an appearance of partiality, Judge Gergel should be recused or disqualified from this case at bar.

Judge Gergel, in the *Dong* case, further stated as follows:

[T]he issue of judicial recusal involves more than actual bias and can be required where a judge’s “impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). This is based on an objective standard of “a reasonable well informed observer” who is aware of all of the facts and circumstances. *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1998). The purpose of § 455(a) is to preserve public confidence in the integrity and impartiality of the federal judiciary by requiring recusal where there might be a public perception of a lack of impartiality or fairness by a judge sitting in a particular matter. *See United States v. Bobo*, 323 F. Supp. 2d 1238, 1242 (N.D. Ala. 2004).

Judge Gergel should abide by his previously pronounced standards for recusal and, in an abundance of caution, be disqualified from this proceeding in order to avoid an appearance of impropriety and an appearance of lack of impartiality pursuant to 28 U.S.C. §§ 144 and 455 and the Due Process Clause.

F. DISCOVERY IS WARRANTED

Based upon Judge Gergel’s above referenced extra-judicial and *ex parte* communications and investigations, discovery is warranted so that “all of the circumstances” surrounding the impartiality analysis are known and the record can be supplemented for appeal. *In re Kensington*

International Limited, No. 03-4212 (3rd Cir. Dec. 18, 2003) (granting discovery on recusal when judge undertook *ex parte* communications because the question is “whether a reasonable person knowing all the circumstances would harbor doubts concerning the judge’s impartiality” — an inquiry which necessarily requires that we know all the circumstances.”). Defendant requests such discovery.

ATTORNEY CERTIFICATION OF GOOD FAITH

The undersigned counsel for the Defendant certifies that this Motion and Defendant’s Affidavit are made in good faith.¹⁰

CONCLUSION

For the reasons set forth above, as well as any which may be advanced during any subsequent hearing on the Motion, Defendant Strauss respectfully requests that this Motion be granted and that Judge Gergel be recused or disqualified. Defendant Strauss respectfully requests that this Motion be transferred to another District Judge within the District of South Carolina for determination, and discovery be allowed. *Id.*; *Cherry*, [330 F.3d 658](#) n. 13; *United States v. Heldt*, [668 F.2d 1238, 1271-72](#) (D.C. Cir. 1981); [28 U.S.C. § 144](#).

SO MOVED.

December 6, 2023

Charleston, S.C.

Respectfully submitted,

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¹⁰ The undersigned counsel consulted with the Assistant U.S. Attorney handling this case and she has indicated she will oppose this Motion.

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Attorney for Defendant Peter J. Strauss

Exhibits:

Exhibit 1 Transcript of 5/6/2019 hearing

Exhibit 2 Transcript of 5/9/2019 hearing

Exhibit 3 Strauss Affidavit

Exhibit 4 Seymour Affidavit

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

* * * * *

SOLAR ECLIPSE INVESTMENT FUND *
XXXV, LLC and EAST WEST BANK *

versus

Civil Action No. 9:19-cv-1176

\$5,000,000.00 U.S. DOLLARS *
DEPOSITED TO IOLTA ACCOUNT *
OF THE STRAUSS LAW FIRM, LLC *
IN REM, AND THE STRAUSS LAW *
FIRM, LLC, *IN PERSONAM* *

May 6, 2019

* * * * *

REPORTER'S OFFICIAL TRANSCRIPT OF THE
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION BEFORE THE
HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
MAY 6, 2019

Appearances:

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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

1 (Call to order of the Court.)

3 : 5 8 P M 2 THE COURT: Please be seated. Okay. I am convening
3 : 5 8 P M 3 a hearing in the matter of Solar Eclipse Investment Fund XXXV
3 : 5 8 P M 4 LLC, and East West Bank versus \$5,000,000.00 U.S. dollars, and
3 : 5 8 P M 5 the Strauss Law Firm, LLC, in personam, 9:19-1176. It's before
3 : 5 9 P M 6 me -- I have a temporary restraining order I granted, and there
3 : 5 9 P M 7 is a motion by the plaintiff for a preliminary injunction.

3 : 5 9 P M 8 Could counsel for the plaintiff identify
3 : 5 9 P M 9 themselves for the record, please?

3 : 5 9 P M 10 MS. SHOUN: Yes, sir, Your Honor. Thank you. I'm
3 : 5 9 P M 11 Cheryl Shoun. I'm here on behalf of plaintiffs with my partner
3 : 5 9 P M 12 Bruce Wallace.

3 : 5 9 P M 13 MR. WALLACE: Good afternoon, Your Honor.

3 : 5 9 P M 14 THE COURT: Yes. And for defense?

3 : 5 9 P M 15 MR. OVERSTREET: Your Honor, David Overstreet
3 : 5 9 P M 16 represents Strauss Law Firm here with Mike McCall.

3 : 5 9 P M 17 THE COURT: And for the record, no one from the
3 : 5 9 P M 18 Strauss Law Firm is here; is that correct?

3 : 5 9 P M 19 MR. OVERSTREET: That's correct, Your Honor. I'm
3 : 5 9 P M 20 here for them.

3 : 5 9 P M 21 THE COURT: Okay. Now, the response I received from
3 : 5 9 P M 22 the -- from the Defendant Strauss Law Firm was that it was not
3 : 5 9 P M 23 going to contest the entry of a preliminary injunction, but --
4 : 0 0 P M 24 and it represented that -- that the \$5 million had come into
4 : 0 0 P M 25 its account and had departed; is that correct?

1 MR. OVERSTREET: Yes, Your Honor.

2 THE COURT: And, Mr. Overstreet, as I understand the
3 situation here, funds were transferred from this Solar Eclipse
4 Investment Fund XXXV, LLC to the Strauss Law Firm; is that
5 correct? was it directly from the fund -- I'll call that "the
6 fund" -- to the Strauss Law Firm?

7 MR. OVERSTREET: I apologize, Your Honor. I'm not
8 sure of the particulars; only that the 5 million did come to
9 the Strauss Law Firm Iolta.

10 THE COURT: You're not sure where it came from?

11 MR. OVERSTREET: We do have a copy of the wire for
12 that night.

13 MR. MCCALL: I believe, Your Honor, that the funds
14 did come from an account that was in the name of Solar.

15 THE COURT: So it's -- it's the Solar account and
16 then into the Strauss Law Firm?

17 MR. MCCALL: Correct, Your Honor.

18 THE COURT: And to your knowledge, had the Strauss
19 Law Firm been a normal recipient of funds from that account?

20 MR. OVERSTREET: Yes, Your Honor, I do believe
21 Strauss Law Firm had received funds from them in the past to
22 the Iolta.

23 THE COURT: From the Solar Eclipse Investment Fund
24 XXXV?

25 MR. OVERSTREET: I'm not aware of that, Judge. I

1 don't know the answer to that.

2 THE COURT: So where would they have gotten funds
3 from?

4 MR. OVERSTREET: I just know they had an ongoing
5 relationship with the Carpoffs and their entities.

6 THE COURT: The Carpoffs. And could you state who
7 they are?

8 MR. OVERSTREET: My understanding is they own DC
9 Solar.

10 THE COURT: Okay. So -- so there was a personal
11 relationship between Carpoﬀ -- the Carpoffs and the Strauss
12 Law Firm?

13 MR. OVERSTREET: Attorney-client relationship, yes,
14 Your Honor.

15 THE COURT: Okay. And had the -- and what were the
16 Carpoffs' role in transferring this \$5 million from this --
17 this fund to the Strauss Law Firm?

18 MR. OVERSTREET: I'm sorry, Judge. What was their
19 role?

20 THE COURT: What was the role of the Carpoffs
21 personally in transferring those funds?

22 MR. OVERSTREET: I'm sorry, Judge. I'm unaware of
23 that. I don't know.

24 THE COURT: You don't know. Who directed the money
25 to come to the Strauss Law Firm?

1 **MR. OVERSTREET:** My understanding, Judge, is that
2 Mr. Strauss was not aware that the money was going to come.

3 **THE COURT:** So how did he even learn of it?

4 **MR. OVERSTREET:** It hit his account.

5 **THE COURT:** Well, and then did he communicate with
6 somebody?

7 **MR. OVERSTREET:** Yes, Your Honor.

8 **THE COURT:** And who did he communicate with?

9 **MR. OVERSTREET:** My understanding is he spoke with
10 Mr. Carpoff.

11 **THE COURT:** Mr. Carpoff?

12 **MR. OVERSTREET:** I think so.

13 **THE COURT:** And are there any written instructions
14 from Mr. Carpoff or anyone else about where to distribute this
15 \$5 million?

16 **MR. OVERSTREET:** I do believe, Your Honor, there is
17 some email correspondence that we can certainly pull and hand
18 to the other side regarding the distribution of the funds.

19 **THE COURT:** And was that your understanding from
20 Mr. Carpoff to Mr. Strauss?

21 **MR. OVERSTREET:** I believe so, Your Honor.

22 **THE COURT:** Okay. And did that detail where these
23 amounts were to go? I mean, how would Mr. Strauss know where
24 to send the money?

25 **MR. OVERSTREET:** I believe he was invoiced from a

1 number of entities.

2 THE COURT: How did they know that he would have the
3 money?

4 MR. OVERSTREET: I don't know that, Your Honor. I
5 assume Mr. Carpoﬀ and his entities retained those other
6 entities, which as we discussed were law firms.

7 THE COURT: Okay. Well, some of them are law firms.
8 Not all of them. Let's go through those. \$2 million went to
9 the Skadden Arps Law Firm?

10 MR. OVERSTREET: Yes, Your Honor. That's my
11 understanding.

12 THE COURT: And we have met in chambers, so I know a
13 little bit about this from you, Mr. Overstreet, and my
14 understanding is that Skadden Arps represented one of the
15 Carpoﬀs for about six hours; is that correct?

16 MR. MCCALL: Your Honor, I believe that Skadden
17 represented Mr. Carpoﬀ for a month approximately and then
18 Mrs. Carpoﬀ for the better part of a day on the day of the
19 seizure, and I believe they've also been engaged by DC Solar in
20 various capacities over several years.

21 THE COURT: Okay. And the \$2 million is in the
22 Skadden Arps account? Is that what you understand?

23 MR. MCCALL: That's my understanding.

24 THE COURT: And are they holding it? Have they
25 expended those moneys?

1 **MR. MCCALL:** My understanding, Your Honor, is that
2 those funds are currently sitting in an interest-bearing
3 account, all of them.

4 **THE COURT:** And is -- by the way, was Mr. Strauss
5 aware the day before these moneys were transferred that the
6 Federal Government had executed search warrants and seizure
7 warrants and had seized all of the assets of the Carpoffs and
8 DC Solar? Was he aware of that?

9 **MR. OVERSTREET:** I don't know, Your Honor.

10 **THE COURT:** And then there's something called Paul
11 Meltzer, a professional corporation in Santa Cruz, California.
12 What is that? \$500,000.

13 **MR. MCCALL:** Our understanding, Your Honor, is
14 Mr. Meltzer is a criminal defense attorney in California who
15 represents either Mr. or Mrs. Carpoff.

16 **THE COURT:** Okay. And then there is a \$750,000
17 payment to Worldwide Property and Casual Ltd. SAC. What is
18 that?

19 **MR. MCCALL:** Your Honor, that is -- that is a portion
20 of a premium owed for Mr. Carpoff's captive insurance company,
21 Bay Shore Select, for the upcoming year.

22 **THE COURT:** And who manages that worldwide Property
23 and Casualty Ltd. SAC?

24 **MR. MCCALL:** Who manages it?

25 **THE COURT:** Yes.

1 **MR. MCCALL:** I mean, I don't know if manage is the
2 appropriate term, but I can represent to the Court that the
3 Strauss Law Firm -- or Peter Strauss certainly has control
4 over --

5 **THE COURT:** Has control over that fund, that
6 \$750,000?

7 **MR. MCCALL:** Correct. And the same would be true for
8 the next \$750,000.

9 **THE COURT:** Madison First Property and Casualty,
10 another \$750,000. And so Mr. Strauss transferred those funds
11 that had come out of this investment fund to those accounts?

12 **MR. MCCALL:** Correct, Your Honor, for premiums for
13 the two captive insurance companies.

14 **THE COURT:** And these were captive insurance
15 companies. These were not DC Solar. This was something else?

16 **MR. MCCALL:** I believe they are DC Solar affiliated.
17 I believe that DC Solar Solutions is the insured for one of the
18 captives, and then DC Solar Distributors is the insured for one
19 of the --

20 **THE COURT:** Those are separate entities?

21 **MR. MCCALL:** Correct, Your Honor.

22 **THE COURT:** Yes, sir. I thought so.

23 **MR. MCCALL:** One is owned by Mr. Carpoff. One is
24 owned by Mrs. Carpoff.

25 **THE COURT:** And then the Law Office of Daniel Bakondi

1 in San Francisco. who is that? \$250,000.

2 **MR. MCCALL:** Your Honor, we were not -- we haven't
3 been able to find out exactly who Mr. Bakondi represents in
4 this, but it's our understanding it's one of the Carpoffs in
5 some connection with the ongoing investigation.

6 **THE COURT:** Clark Hill PLLC LLC in Las Vegas.
7 \$275,000. what's that?

8 **MR. MCCALL:** That's law firm in Las Vegas, Your
9 Honor, that is the lead bankruptcy counsel for DC Solar and
10 affiliated entities.

11 **THE COURT:** And then Segal and Associates Client
12 Trust Account in Sacramento, 250,000. what's that?

13 **MR. MCCALL:** That is an engagement, a retainer for an
14 attorney, another criminal defense attorney in California named
15 Malcolm Segal who represents I believe Mr. Carpoﬀ in the
16 criminal matters.

17 **THE COURT:** Then \$175,000 to BR -- BRGR Revenue
18 Depository. what is that?

19 **MR. MCCALL:** That is GlassRatner, Your Honor, which
20 is the -- a gentleman at GlassRatner named Seth Freeman was
21 appointed as the chief restructuring officer for DC Solar, and
22 that was his retainer.

23 **THE COURT:** And then \$50,000 to BH Capital Ventures
24 LLC. what is that?

25 **MR. MCCALL:** we haven't -- we haven't found exactly

1 what BH Capital Ventures is, but our understanding is they have
2 some involvement in some real estate assets that they were
3 attempting to sell when the bankruptcy was in Chapter 11 before
4 it was converted into Chapter 7.

5 THE COURT: well, bankruptcy wasn't filed until
6 February, and these were made in December.

7 MR. MCCALL: I believe the last two were made on
8 February 1st.

9 THE COURT: Oh, I see.

10 MR. MCCALL: And so --

11 THE COURT: Still before the bankruptcy filing.

12 MR. MCCALL: I believe it might have been the day of,
13 Your Honor, and I believe they're somehow connected with some
14 real estate transactions that they were trying to carry out in
15 the bankruptcy.

16 THE COURT: well, here is my concern. From the
17 information I have, it appears that the \$5 million transfer to
18 the Strauss Law Firm is likely an illegal transfer, and those
19 recipients are in receipt of funds that should not have gone to
20 them from this fund. The fund was to purchase mobile solar
21 generators. It wasn't to pay all these lawyers and captive
22 funds and all of this, and it was certainly done in a way that
23 appears surreptitious to me. It's one day after the Government
24 has seized every asset they can of the Carpoffs.

25 So there's a source of concern by the Court

1 about all of this, and I've asked you a lot of questions I
2 understand y'all can't answer for me. You just don't know the
3 answer. So I'm going to order this -- well, I'll schedule this
4 sometime Thursday. I'll going to order Mr. Strauss into the
5 Court here, and I'm going to order him to produce all the
6 documents related to the instructions he received for these
7 transfers.

8 I'm also going to extend the TRO to all of these
9 entities, and I'm going to offer them the opportunity to come
10 in to be heard on the preliminary injunction. I anticipate --
11 I don't think it takes a crystal ball -- that the plaintiff is
12 likely to add them as parties; is that fair, Ms. Shoun?

13 **MS. SHOUN:** Yes, sir, Your Honor, that is absolutely
14 fair.

15 **THE COURT:** And, you know, the easy way to do this is
16 simply to repatriate the moneys if there's some legal question
17 about it, and we'll set up a way in which that can be done to
18 the Court. I would urge you to go ahead and talk to
19 Mr. Strauss about that captive premium. And, you know, to the
20 extent that the \$5 million is repatriated, this Court doesn't
21 have any further jurisdiction.

22 I'll say on the record, I have been in
23 communication with the Bankruptcy Court. It does not appear
24 that this -- this liability, this obligation, this debt is
25 listed as a liability. They're not listed as creditors in the

1 bankruptcy. I've spoken to Judge Beasley about this. He has
2 asked me do what I can to repatriate these funds, and then once
3 we do that, we'll sort out between the two courts about whether
4 this is an asset of the bankruptcy or not. I don't know the
5 answer to that, but we'll need to get further evidence.

6 But right at this moment, I think the most
7 urgent thing is to -- is to restore the status quo, and to the
8 extent these law firms think they have some lawful entitlement
9 to it, they can come here and litigate that issue if they wish
10 before me. I think it's looking pretty dubious that they have
11 a right to those funds, and particularly under the
12 circumstances where Skadden Arps apparently particularly is
13 involved and these other criminal defense firms are fully aware
14 of the circumstances here, that there has been -- I mean, the
15 press accounts, there were dozens of FBI agents circling the
16 Carpoffs home. Judge Beasley tells me that every hearing he
17 has, he has SEC investigators and FBI agents sitting in the
18 audience, and I don't mind to say that my head of my U.S.
19 Attorneys Office is sitting in the back row here right now, and
20 there's a lot of Government interest in all of this.

21 So I don't have any desire to put more on my
22 plate than I need, but I'm going to -- I feel like the
23 plaintiffs have a legitimate claim to these funds, at least
24 what I've heard so far, and my job is to try to restore the
25 status quo to this, and then we can sort out who actually owns

1 the money. Does that make sense to everybody?

2 MS. SHOUN: Yes, sir, Your Honor.

3 THE COURT: Mr. Overstreet, do you anticipate any
4 problem having Mr. Strauss appear on Thursday?

5 MR. OVERSTREET: Your Honor, I will call him when we
6 walk out of the courtroom. My understanding is he was in
7 Hilton Head when we spoke earlier, so I don't see that --

8 THE COURT: Let him know that if he seems to have any
9 difficulty getting here, I'm glad to have him escorted by the
10 marshals.

11 MR. OVERSTREET: Yes, sir.

12 THE COURT: Okay?

13 MR. OVERSTREET: Your Honor, if I could briefly add
14 one thing, my firm had some concern at the very beginning about
15 whether or not releasing the information related to the
16 distribution of these funds from the Iolita would in any way be
17 privileged. We'd be --

18 THE COURT: Mr. Overstreet, you raised that with me.

19 MR. OVERSTREET: Yes, Your Honor.

20 THE COURT: And I told you, and I will say on the
21 record that these are not protected, attorney-client privilege.
22 These transactions appear to be unlawful. They would not be
23 protected by privilege, and he appears -- it's not quite clear
24 what capacity Mr. Strauss actually received these funds since
25 he's taking some of the funds himself and putting them in

4 : 1 4 P M 1 accounts he controls.

4 : 1 4 P M 2 Ms. Shoun, do you have anything else you wish to
4 : 1 4 P M 3 add in terms of the Court --

4 : 1 4 P M 4 MS. SHOUN: Your Honor, only one matter of logistics,
4 : 1 4 P M 5 and that would be the service of the TRO as it will be extended
4 : 1 4 P M 6 to these third parties.

4 : 1 4 P M 7 THE COURT: Yeah, let's talk about that for a minute.
4 : 1 4 P M 8 As a practical matter, I -- I will try to get something out
4 : 1 4 P M 9 this afternoon if that is possible and on the record. I will
4 : 1 4 P M 10 ask and direct both counsel to do everything possible to
4 : 1 4 P M 11 communicate with each of these entities, to allow them to
4 : 1 4 P M 12 number 1, be advised that those funds are restrained pending
4 : 1 4 P M 13 further action of the Court, and I'm going to afford them the
4 : 1 4 P M 14 opportunity to appear on Thursday, if they wish, before I
4 : 1 4 P M 15 extend the preliminary injunction to them, and then I will
4 : 1 4 P M 16 afford them further opportunity to address this issue with the
4 : 1 5 P M 17 Court.

4 : 1 5 P M 18 But what we're going to do is we're going to
4 : 1 5 P M 19 restore the fund's support, and then if there's a claim to it,
4 : 1 5 P M 20 we'll sort out among these various parties about who has a
4 : 1 5 P M 21 legitimate claim to these funds.

4 : 1 5 P M 22 MS. SHOUN: Your Honor, we are not in receipt of the
4 : 1 5 P M 23 documents from which counsel I suppose and Your Honor is
4 : 1 5 P M 24 reading.

4 : 1 5 P M 25 THE COURT: Would you, Mr. Overstreet, hand Ms. Shoun

1 those documents now?

2 MS. SHOUN: Thank you.

3 THE COURT: And I will before the end of the day
4 notice the hearing for Thursday. We'll come back and do that,
5 and we'll enter an order in just a few minutes.

6 Ms. Shoun, anything else I need to do at this
7 point from the plaintiff?

8 MS. SHOUN: Beg the Court's indulgence, Your Honor.

9 (Pause.)

10 MS. SHOUN: Nothing, Your Honor. Thank you.

11 THE COURT: Mr. Overstreet, anything further?

12 MR. OVERSTREET: No, sir. Thank you, Your Honor.

13 THE COURT: Very good. And, Mr. Overstreet, I don't
14 have even the slightest suggestion that you or your law firm
15 have done anything untoward here. It's quite clear you've come
16 in at a very late hour, and you've done everything you can to
17 try to straighten this out, and I appreciate that. And
18 we'll -- you know, if something inappropriate has happened,
19 it's not involved your law firm.

20 MR. OVERSTREET: Thank you, Your Honor.

21 MR. MCCALL: Thank you, Your Honor.

22 THE COURT: Thank you very much. This hearing is
23 adjourned.

24 MS. SHOUN: Thank you, Your Honor.

25

* * * * *

CERTIFICATE

I, Tana J. Hess, CCR, FCRR, Official Court Reporter
for the United States District Court, District of South
Carolina, certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of proceedings in the above-entitled matter.



Tana J. Hess, CRR, FCRR, RMR
Official Court Reporter

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

* * * * *

SOLAR ECLIPSE INVESTMENT FUND *
XXXV, LLC and EAST WEST BANK *

versus

Civil Action No. 9:19-cv-1176

\$5,000,000.00 U.S. DOLLARS *
DEPOSITED TO IOLTA ACCOUNT *
OF THE STRAUSS LAW FIRM, LLC *
IN REM, AND THE STRAUSS LAW *
FIRM, LLC, *IN PERSONAM* *

May 9, 2019

* * * * *

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HONORABLE RICHARD M. GERGEL
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MAY 9, 2019

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For Recipient BH Capital Ventures LLC	Graybill Lansche & Vinzani LLC BY: Jake S. Barker 225 Seven Farms Drive Suite 207 Charleston, SC 29492 843.408.4063
--	--

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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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1 (Call to order of the Court.)

2 THE COURT: Good morning. Please be seated.

3 MS. SHOUN: Good morning, Your Honor.

4 THE COURT: Ms. Perry, we have folks on line as
5 well --

6 COURTROOM DEPUTY: Yes, Your Honor.

7 THE COURT: -- on the telephone? Okay. Okay.

8 Let's -- this is a -- the matter of Solar Eclipse Investment
9 Fund XXXV versus \$5,000,000.00 and the Strauss Law Firm.

10 Could counsel identify themselves for the
11 record, please?

12 MS. SHOUN: Yes, sir, Your Honor. Thank you. I'm
13 Cheryl Shoun with Nexsen Pruet here on behalf of the
14 plaintiffs. Sitting at counsel table with me is my partner,
15 Bruce Wallace. Also present, Your Honor, from Nexsen Pruet on
16 behalf of the plaintiffs is Val Stieglitz, and -- who is also
17 on the complaint on behalf of the plaintiffs, and Ron Jones,
18 who has not made a formal appearance, but we'd ask the Court
19 note his appearance here today.

20 THE COURT: Note his appearance as well, yes.

21 MS. SHOUN: Thank you, Your Honor.

22 THE COURT: Very good.

23 MR. OVERSTREET: Thank you, Your Honor. David
24 Overstreet representing the Strauss Law Firm.

25 THE COURT: Yes.

11:57 1 MR. ALLEN: Yes, Your Honor. Sam Allen on behalf of
11:57 2 Hamilton Captive Management LLC, which is a South Carolina
11:57 3 company. Also as the agent at this point in time for worldwide
11:57 4 Property Casualty and Madison First Property Casualty, which
11:57 5 are both bohemian companies.

11:57 6 THE COURT: These are recipients?

11:57 7 MR. ALLEN: They are, Your Honor.

11:57 8 THE COURT: Okay. Others representing recipients?

11:57 9 MR. WOOTEN: Your Honor, Patrick Wooten here on
11:57 10 behalf of several of the recipients: Skadden, Clark Hill,
11:57 11 GlassRatner, the Law Offices of Paul Meltzer, and Segal and
11:58 12 Associates.

11:58 13 THE COURT: Okay.

11:58 14 MR. BARKER: Good morning, Your Honor. Jacob Barker
11:58 15 here on behalf of BH Capital Ventures LLC, one of the
11:58 16 recipients.

11:58 17 THE COURT: Okay. Well, folks, we certainly seem to
11:58 18 have attracted a little bit of attention. Now, there are some
11:58 19 folks online. Could folks online identify themselves?

11:58 20 MR. HARTMAN: Your Honor, this is Jeff Hartman in
11:58 21 Reno representing Christine Lovato in the DC Solar Solutions
11:58 22 case.

11:58 23 THE COURT: Very good. Thank you.

11:58 24 UNIDENTIFIED FEMALE SPEAKER: Good morning, Your
11:58 25 Honor. This is --

1 THE COURT: Please say that again.

2 MR. GAFFNEY: Your Honor, this is Don Gaffney of the
3 Snell and Wilmer Law Firm in Phoenix, Arizona, representing
4 Solarmore, a representative of approximately 20 investment
5 funds.

6 THE COURT: Okay.

7 MS. CARLYON: Good morning, Your Honor. Candace
8 Carlyon at Clark Hill PLC.

9 THE COURT: Okay. Anyone else?

10 MR. JUNG: Yes, good morning, Your Honor. This is --

11 THE COURT: Go ahead.

12 MR. JUNG: This is Curtis Jung. This is Curtis Jung
13 on behalf of the plaintiff, Solar Eclipse Investment Fund XXXV.

14 THE COURT: Okay.

15 MS. PROUT: This is Maita Prout, Deputy General
16 Counsel of East West Bank.

17 THE COURT: Anyone else?

18 MS. LI: Good morning, Your Honor. This is Annie Li
19 from Skadden Arps.

20 THE COURT: Okay. Anyone else?

21 Okay. Folks, I have been -- the purpose of this
22 particular hearing was that I had a hearing several days ago on
23 the 6th of May, and defense counsel appeared and was able to
24 answer some of my questions, but indicated on others that he
25 would have to defer to his client to answer questions. I'm

1 trying to sort out here a sort of threshold question, initially
2 a threshold question, and that is whether these funds, the \$5
3 million which is the subject of this litigation, was ever
4 taken -- taken under the control of DC Solar, or did it go from
5 the investment fund directly to some other third party and not
6 DC Solar? That obviously has potential relevance to the
7 jurisdiction of this Court, the jurisdiction of the Bankruptcy
8 Court. And I was hoping that Mr. Strauss might appear and
9 provide us more detail about exactly how this transaction
10 occurred. We know that it came from the -- it's the plaintiff.
11 I'm going to call it "the fund". This is Solar Eclipse
12 Investment Fund XXXV. I'll call it "the fund" here. How it
13 got from the fund to Mr. Strauss' law firm, and what we can
14 talk about in terms of instructions you received, who gave
15 those instructions. So who facilitated the transfer? who gave
16 instructions for the disbursement to these recipients?

17 And all of that is at least at this stage trying
18 to sort out whether this was ever an asset of DC Solar and went
19 into the accounts of DC Solar, or did it go -- or was it in
20 some way taken by someone, transferred to a third party. We'll
21 see who that is; and whether that would then take it outside of
22 the bankruptcy estate. I'm not reaching a conclusion that it
23 would. I don't know -- literally, I'm telling you I don't know
24 the answer to this.

25 So if I could ask -- initially what I intend to

1 do is put Mr. Strauss on the stand. Put him under oath, put
2 him on the stand. I intend to ask some questions, and then the
3 parties to the lawsuit may ask questions as well.

4 So, Mr. Strauss, if you would approach my
5 courtroom deputy, and she will administer the oath.

6 **THE COURTROOM DEPUTY:** Place your left hand on the
7 Bible and raise your right hand. Please state your full name.

8 **THE WITNESS:** Peter Joseph Strauss.

9 (Witness sworn.)

10 **COURTROOM DEPUTY:** Thank you. Please take the stand.

11 **PETER JOSEPH STRAUSS,**
12 a witness called by the Court, being first duly sworn, was
13 examined and testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q.** Could you state your full name, please, sir?

17 **A.** Peter Joseph Strauss.

18 **Q.** And, Mr. Strauss, you are a licensed attorney; is that
19 correct?

20 **A.** Yes.

21 **Q.** And do you also operate businesses beyond just simply
22 operating a law practice?

23 **A.** Yes, I do.

24 **Q.** What's the nature of those businesses?

25 **A.** A captive insurance management firm.

STRAUSS - EXAMINATION BY THE COURT

1 Q. Okay. And what's the name of that firm?

2 A. Hamilton Captive Management.

3 Q. And I believe that's one of the two companies that
4 received payments after the funds arrived in your account; is
5 that correct?

6 A. On advice of counsel, I have to invoke my Fifth Amendment
7 privilege.

8 Q. You're asserting your Fifth Amendment right to that
9 question?

10 A. Yes, Your Honor.

11 Q. You -- can you share with me how the funds came to you,
12 from what account the funds derived that came to the Strauss
13 Law Firm?

14 A. I'm sorry, Your Honor. I have to invoke my Fifth
15 Amendment again --

16 Q. Because --

17 A. -- on advice of counsel.

18 Q. -- your answer may tend to incriminate you?

19 A. On advice of counsel, I --

20 Q. Well, that's what it is, is it may tend to incriminate
21 you. You're asserting your Fifth Amendment right because your
22 response may tend to incriminate you? Is that what you're
23 telling me?

24 A. I'm asserting my Fifth Amendment right on advice of
25 counsel.

STRAUSS - EXAMINATION BY THE COURT

1 Q. Yeah, but that's -- advice of counsel is not a Fifth
2 Amendment right. Fifth Amendment right is that you have a
3 right to remain silent, because your response may tend to
4 incriminate you, and you don't -- there's no requirement that
5 you be a witness against yourself. That is the basis of the
6 Fifth Amendment. Are you insisting -- asserting the Fifth
7 Amendment right because your response may tend to incriminate
8 you?

9 A. Yes, Your Honor.

10 Q. Okay. Did you -- in this transfer of funds, did you have
11 any interaction or instructions from either Mr. or
12 Mrs. Carpoff?

13 A. Your Honor, on advice of counsel, I have to invoke my
14 Fifth Amendment right.

15 Q. Your law firm received funds. We know that. Your
16 attorneys have provided us documents indicating that. Can you
17 tell me how your law firm -- how your law firm characterized
18 those funds in your Iolta account?

19 A. On advice of counsel, I have to invoke my Fifth Amendment
20 right.

21 Q. Had you previously received funds in this manner as you
22 received them in the \$5 million? Had that been a routine
23 practice of any type?

24 A. On advice of counsel, I have to invoke my Fifth Amendment
25 right.

STRAUSS - EXAMINATION BY THE COURT

1 Q. who gave you the instructions regarding the nine entities
2 which were to receive the \$5 million?

3 A. On advice of counsel, I have to invoke my Fifth Amendment
4 right.

5 Q. I take it to any question concerning the arrival or
6 instructions or the disbursement of funds, you're going to
7 assert your Fifth Amendment right; is that correct?

8 A. Yes, Your Honor.

9 THE COURT: Okay. Any questions from the plaintiff?

10 MS. SHOUN: May I beg the Court's indulgence for just
11 a moment, Your Honor?

12 THE COURT: Yes.

13 (Pause.)

14 MS. SHOUN: Your Honor, if it may please the Court,
15 counsel for plaintiffs have some questions, and just as a bit
16 of a preface to this, Your Honor, I understand what Mr. Strauss
17 has indicated to the Court about invoking his Fifth Amendment
18 rights. Nonetheless, it is our understanding because this is a
19 civil matter that it's -- it behooves us to go ahead and
20 present these questions to Mr. Strauss, even though he's
21 indicated what his answer is going to be. So I would just ask
22 for the Court's patience and indulgence while we go through
23 this process.

24 THE COURT: Keeping them within reason. I think he's
25 indicated to us that he is going to assert his Fifth Amendment

STRAUSS - CROSS-EXAMINATION

1 right, but please proceed.

2 MS. SHOUN: Yes, sir. Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. SHOUN:

5 Q. Mr. Strauss, have you ever represented Solar Eclipse
6 Investment Fund XXXV?

7 A. On advice of counsel, I need to invoke my Fifth Amendment
8 right.

9 Q. Yes, sir. For ease of reference, I will hereinafter refer
10 to that entity, Solar Eclipse Investment Fund XXXV, simply as
11 "the fund".

12 were -- have you ever acted as counsel for DC
13 Solar Solutions?

14 A. On advice of counsel, I'm invoking my Fifth Amendment
15 right.

16 Q. Did you receive any funds on December 19th, 2018 as
17 counsel for DC Solar solutions?

18 A. On advice of counsel, I'm invoking my Fifth Amendment.

19 Q. Do you have a signed, valid retainer agreement with DC
20 Solar Solutions?

21 A. On advice of counsel, I'm invoking my Fifth Amendment
22 right.

23 Q. When did you first review the limited liability company
24 agreement of Solar Eclipse Investment Fund?

25 A. On advice of counsel, I'm invoking my Fifth Amendment

STRAUSS - CROSS-EXAMINATION

1 right.

2 Q. When did you first read the solar equipment purchase
3 agreement entered into between the fund and DC Solar Solutions?

4 A. On advice of counsel, I'm invoking my Fifth Amendment
5 right.

6 Q. Yes, sir. Mr. Strauss, have you presented to this Court
7 today all documentation the Court required you to present to it
8 relative to the \$5 million wired into the Iolta account at the
9 Strauss Law Firm and all monies wired out of that \$5 million?

10 A. On advice of counsel, I'm invoking my Fifth Amendment
11 right.

12 Q. Mr. Strauss, in responding to the Court's order that all
13 documents be produced relative to the wire of the \$5 million
14 into the Iolta account of the Strauss Law Firm and all monies
15 wired out of the Strauss Law Firm, have you undertaken a
16 thorough examination of the records, your personal records, the
17 records of the Strauss Law Firm, and the records of Hamilton
18 Captive Management?

19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 right.

21 Q. What is the physical address of the Strauss Law Firm?

22 A. 10 Hospital Center Common, Hilton Head Island, South
23 Carolina, 29926.

24 Q. Does it maintain any other physical presence?

25 A. I don't know how to answer that. We're moving offices

STRAUSS - CROSS-EXAMINATION

1 soon.

2 Q. I'm sorry?

3 A. We're moving offices soon. I don't know how to answer the
4 question.

5 THE COURT: Answer it as of today.

6 A. As of today, no.

7 Q. Are records of the Strauss Law Firm maintained at any
8 location other than the 10 Hospital Drive address in Hilton
9 Head Island?

10 A. On advice of counsel, I'm invoking my Fifth Amendment
11 right.

12 Q. Are the records of Hamilton Captive maintained at any
13 physical address other than 10 Hospital Drive, Hilton Head
14 Island?

15 A. On advice of counsel, I'm invoking my Fifth Amendment
16 right.

17 Q. How many personal email addresses do you maintain?

18 A. On advice of counsel, I'm invoking my Fifth Amendment
19 right.

20 Q. Do you maintain more than one?

21 A. On advice of counsel, I'm invoking my Fifth Amendment
22 right.

23 Q. How many personal telephone numbers do you maintain?

24 A. On advice of counsel, I'm invoking my Fifth Amendment
25 right.

STRAUSS - CROSS-EXAMINATION

1 Q. How many phone numbers are maintained, owned by, or
2 utilized by the Strauss Law Firm, LLC?

3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.

5 Q. How many telephone numbers are owned, utilized or
6 otherwise maintained by Hamilton Captive?

7 A. On advice of counsel, I'm invoking my Fifth Amendment
8 right.

9 Q. Mr. Strauss, have you been apprised of any criminal action
10 being pursued against you?

11 A. On advice of counsel, I'm invoking my Fifth Amendment
12 right.

13 Q. Have you received a target letter indicating any action is
14 being investigated or pursued against you?

15 A. On advice of counsel, I'm invoking my Fifth Amendment
16 right.

17 Q. Are you aware of any criminal investigation or criminal
18 action that may be pursued against any employee or other
19 individual affiliated with the Strauss Law Firm?

20 A. On advice of counsel, I'm invoking my Fifth Amendment
21 right.

22 Q. Are you aware of any criminal investigation or action that
23 is being pursued against any individual employed by or
24 otherwise affiliated with Hamilton Captive?

25 A. On advice of counsel, I'm invoking my Fifth Amendment

STRAUSS - CROSS-EXAMINATION

1 right.

2 Q. In response to the Court's question, you indicated, I do
3 believe, that you hold a valid license as a member of the South
4 Carolina Bar; is that correct?

5 A. Yes.

6 Q. Do you hold any other licenses issued by the state of
7 South Carolina or any other state?

8 A. Law license?

9 Q. Any other license. I mean, other than maybe a fishing
10 license or a driver's license. Do you have to -- do you hold a
11 license for your activity associated with captive management
12 work, with your insurance captive management group?

13 A. On advice of counsel, I'll invoke my Fifth Amendment
14 right.

15 Q. Mr. Strauss, is it your testimony that the \$5 million at
16 issue here just landed in the Iolta account of the Strauss Law
17 Firm on December 19th, 2018 without any prior notice to the
18 Strauss Law Firm?

19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 right.

21 Q. Do you have any agreement or document that sets forth the
22 basis for those funds, the \$5 million being wired into the
23 Iolta account of the Strauss Law Firm on December 19th?

24 A. On advice of counsel, I'm invoking my Fifth Amendment
25 right.

STRAUSS - CROSS-EXAMINATION

1 Q. On December 19th, 2018, did you indeed represent DC Solar
2 Solutions?

3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.

5 Q. On December 19th, 2018, did you represent the fund?

6 A. On advice of counsel, I'm invoking my Fifth Amendment
7 right.

8 Q. On December 19th, 2018, did you represent either Jeffrey
9 or Paulette Carpoff?

10 A. On advice of counsel, I'm invoking my Fifth Amendment
11 right.

12 Q. Mr. Strauss, what individual or entity did you represent
13 on December 19th, 2018 that's related in any manner to the wire
14 of \$5 million into your Iolta account from the fund?

15 A. On advice of counsel, I'm invoking my Fifth Amendment
16 right.

17 Q. How did you learn that \$5 million had been wired into your
18 Iolta account?

19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 right.

21 Q. What did you do when you learned \$5 million had been wired
22 into your Iolta account?

23 A. On advice of counsel, I'm invoking my Fifth Amendment
24 right.

25 Q. Mr. Strauss, when did you become aware that the business

STRAUSS - CROSS-EXAMINATION

1 locations of DC Solar Solutions had been the subject of various
2 search and seizure warrants of the Federal Government?

3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.

5 Q. At what point did you become aware that the principals of
6 the DC Solar Solutions and affiliated entities had been the
7 subject of various search and seizures warrants of the Federal
8 Government?

9 A. On advice of counsel, I'm invoking my Fifth Amendment
10 right.

11 Q. Mr. Strauss, what direction did you get from the Skadden
12 Law Firm as to the incoming wire of the \$5 million into your
13 Iolta account?

14 A. On advice of counsel, I'm invoking my Fifth Amendment
15 right.

16 Q. And what instruction did you get from the Skadden Law Firm
17 as to the disbursement of any of the \$5 million out of the
18 Iolta account of the Strauss Law Firm?

19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 right.

21 Q. Have either Jeffrey or Paulette Carpoff, together or
22 individually, ever been clients of Hamilton Captive Management,
23 LLC?

24 A. On advice of counsel, I'm invoking my Fifth Amendment
25 right.

STRAUSS - CROSS-EXAMINATION

1 Q. When most recent to December 19th, 2018 were the Carpoffs,
2 either together or individually, clients of Hamilton Captive
3 Management?

4 A. On advice of counsel, I'm invoking my Fifth Amendment
5 right.

6 Q. Did you have any conversations with either Mr. or
7 Mrs. Carpoft on December -- on or about December 19th, 2018,
8 concerning the incoming \$5 million into the Iolta account?

9 A. On advice of counsel, I'm invoking my Fifth Amendment
10 right.

11 Q. And what conversations did you have with either Mr. or
12 Mrs. Carpoft when any of those funds were transferred out of
13 the Iolta account?

14 A. On advice of counsel, I'm invoking my Fifth Amendment
15 right.

16 Q. Mr. Strauss, what do you understand to be the purpose of
17 the wire in the amount of \$2 million that was sent from your
18 Iolta account to Skadden Arps?

19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 right.

21 Q. Have you ever been associated or otherwise affiliated with
22 Skadden Arps prior to December 19th, 2018?

23 A. On advice of counsel, I'm invoking my Fifth Amendment
24 right.

25 Q. Did you and Skadden have any joint representation

STRAUSS - CROSS-EXAMINATION

1 12:17 1 agreement relative to the Carpoffs?

2 12:17 2 A. On advice of counsel, I'm invoking my Fifth Amendment
3 12:17 3 right.

4 12:17 4 Q. Is there any joint representation agreement between your
5 12:17 5 law firm and Skadden relative to representation of DC Solar
6 12:17 6 Solutions or any other DC Solar entity?

7 12:17 7 A. On advice of counsel, I'm invoking my Fifth Amendment
8 12:17 8 right.

9 12:17 9 Q. What is the total amount of a wire that you may make from
10 12:17 10 your Iolta account that's held at South State Bank in a one-day
11 12:18 11 period?

12 12:18 12 A. On advice of counsel, I'm invoking my Fifth Amendment
13 12:18 13 right.

14 12:18 14 Q. Before wiring any funds whatsoever out of the Iolta
15 12:18 15 account -- and by funds, I do mean again the \$5 million that
16 12:18 16 came into your account -- did you make any inquiry of anybody
17 12:18 17 of the purpose for such wires out of that account?

18 12:18 18 A. On advice of counsel, I'm invoking my Fifth Amendment
19 12:18 19 right.

20 12:18 20 Q. Mr. Strauss, how many wires out of your Iolta account did
21 12:18 21 you make?

22 12:18 22 A. On advice of counsel, I'm invoking my Fifth Amendment
23 12:18 23 right.

24 12:18 24 Q. When you -- when the wires were made out of the Iolta
25 12:18 25 account of the Strauss Law Firm, did you personally undertake

STRAUSS - CROSS-EXAMINATION

1 12:18 1 that action?

2 12:18 2 A. On advice of counsel, I'm invoking my Fifth Amendment
3 12:18 3 right.

4 12:18 4 Q. Did you appear at a physical location of South State Bank
5 12:18 5 to make those transfers out?

6 12:19 6 A. On advice of counsel, I'm invoking my Fifth Amendment
7 12:19 7 right.

8 12:19 8 Q. Were these wires made pursuant to telephone conversations
9 12:19 9 with a representative of South State Bank?

10 12:19 10 A. On advice of counsel, I'm invoking my Fifth Amendment
11 12:19 11 right.

12 12:19 12 Q. And with whom at South State did you deal when making any
13 12:19 13 of the wires out of the Iolita account represented by the \$5
14 12:19 14 million?

15 12:19 15 A. On advice of counsel, I'm invoking my Fifth Amendment
16 12:19 16 right.

17 12:19 17 Q. Mr. Strauss, what is your familiarity with the
18 12:19 18 relationship between Skadden and Mr. and/or Mrs. Carpoff?

19 12:19 19 A. On advice of counsel, I'm invoking my Fifth Amendment
20 12:19 20 right.

21 12:19 21 Q. What is your understanding of the relationship between
22 12:19 22 Skadden and DC Solar Solutions or any other DC Solar entities?

23 12:20 23 A. On advice of counsel, I'm invoking my Fifth Amendment
24 12:20 24 right.

25 12:20 25 Q. Mr. Strauss, what is your understanding of the

STRAUSS - CROSS-EXAMINATION

1 relationship of any other recipient of the wired funds from
2 your Iolta account to Jeffrey or Paulette Carpoﬀ?

3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.

5 Q. What is your understanding of the relationship between any
6 of the entities to which you wired funds and DC Solar Solutions
7 or other DC Solar entities?

8 A. On advice of counsel, I'm invoking my Fifth Amendment
9 right.

10 Q. Have you discussed this proceeding with anybody at
11 Skadden?

12 A. On advice of counsel, I'm invoking my Fifth Amendment
13 right.

14 Q. Have you discussed this proceeding with any individual or
15 entity affiliated with any other recipients of the \$5 million
16 wired out of your Iolta account?

17 A. On advice of counsel, I'm invoking my Fifth Amendment
18 right.

19 Q. Mr. Strauss, what is the affiliation between the fund and
20 worldwide Property and Casualty?

21 A. On advice of counsel, I'm invoking my Fifth Amendment
22 right.

23 Q. Mr. Strauss, what is the relationship to your knowledge
24 between the fund and Madison First Property and Casualty?

25 MR. ALLEN: Objection, Your Honor. It's outside the

STRAUSS - CROSS-EXAMINATION

1 pleadings.

2 THE COURT: Overruled.

3 THE WITNESS: On advice of counsel, I'm invoking my
4 Fifth Amendment right.

5 BY MS. SHOUN:

6 Q. Mr. Strauss, what knowledge do you have of any
7 relationship between worldwide Property and Casualty or Madison
8 First Property and Casualty and DC Solar Solutions?

9 A. On advice of counsel, I'm invoking my Fifth Amendment
10 right.

11 MS. SHOUN: Your Honor, if I may approach?

12 THE COURT: You may.

13 (Pause.)

14 THE COURT: Anything further?

15 MS. SHOUN: Yes, sir. If I may approach the witness
16 with a copy of that or --

17 THE COURT: You may.

18 MS. SHOUN: Thank you.

19 BY MS. SHOUN:

20 Q. Mr. Strauss, I'm going to hand you what purports to be a
21 letter dated March 22nd, 2019 from me to you and to the Strauss
22 Law Firm LLC, and I'm going to ask you if you recognize that
23 document?

24 A. Yes.

25 Q. And did you receive that document?

STRAUSS - CROSS-EXAMINATION

1 A. Yes.

2 Q. And you've had an opportunity to review that document
3 prior to today's date?

4 A. Yes.

5 Q. And that is a letter from me to you of March 22nd, 2019;
6 is that correct?

7 A. Yes.

8 Q. Okay. And that document asks you, does it not, to provide
9 an accounting of the funds, the \$5 million that was transferred
10 into the Iolta account of the Strauss Law Firm and an
11 explanation of any monies that may have been transferred out;
12 is that right?

13 A. Yes.

14 THE COURT: Mr. Overstreet, you need to quit nodding
15 and communicating to your client.

16 MR. OVERSTREET: Yes, Your Honor.

17 MS. SHOUN: Your Honor, just as a housekeeping
18 matter, we'd ask that this be made the plaintiff's first
19 exhibit.

20 THE COURT: I'm sorry?

21 MS. SHOUN: We'd just ask that this be made the
22 plaintiff's first exhibit. The witness has identified it.

23 THE COURT: Any objection?

24 MR. OVERSTREET: No objection.

25 THE COURT: Exhibit Number 1 is admitted. Please

STRAUSS - CROSS-EXAMINATION

1 proceed.

2 **MS. SHOUN:** Your Honor, if I then may approach?

3 **THE COURT:** You may.

4 **MS. SHOUN:** And may I provide a copy to Your Honor at
5 the same time as --

6 **THE COURT:** Thank you.

7 **BY MS. SHOUN:**

8 Q. Mr. Strauss, I've handed you a document that purports to
9 be an email from Peter Strauss at
10 pstrauss@thestrausslawfirm.com dated March 25th, 2019 at 6:31
11 p.m. Do you recognize this document?

12 **MR. OVERSTREET:** I'm sorry, can I see a copy of that?

13 **MS. SHOUN:** Oh, I'm so sorry. I thought I handed
14 that to you.

15 **THE WITNESS:** On advice of counsel, I'm going to
16 invoke my Fifth Amendment right.

17 **BY MS. SHOUN:**

18 Q. You're invoking your Fifth Amendment right as to whether
19 you've seen that document?

20 A. Yes.

21 Q. I'm sorry?

22 A. Yes.

23 Q. Okay. Thank you. Mr. Strauss, did you write the text of
24 that particular document?

25 A. On advice of counsel, I'm invoking my Fifth Amendment

STRAUSS - CROSS-EXAMINATION

1 right.

2 Q. Mr. Strauss, when this particular document -- this email
3 was written on March 25th, 2019, did -- did anybody assist you
4 in writing this email?

5 A. On advice of counsel, I'm invoking my Fifth Amendment
6 right.

7 Q. Did anybody write this email for you to use as your
8 response to the letter on behalf of the fund dated March 22nd,
9 2019?

10 A. On advice of counsel, I'm invoking my Fifth Amendment
11 right.

12 Q. At what point, Mr. Strauss, did you have the documentation
13 necessary for you to reach a conclusion that Solutions is the
14 only party that had an interest in and right to the \$5 million
15 in your Iolta account?

16 A. On advice of counsel, I'm invoking my Fifth Amendment
17 right.

18 Q. And it would be accurate, would it not, Mr. Strauss, to
19 say that no monies were ever wired or otherwise delivered out
20 of your Iolta account to DC Solutions; is that correct?

21 A. On advice of counsel, I'm invoking my Fifth Amendment
22 right.

23 Q. At any point, did you attempt to return the \$5 million
24 wired into your escrow account to Fund XXXV?

25 A. On advice of counsel, I'm invoking my Fifth Amendment

STRAUSS - CROSS-EXAMINATION

1 right.

2 Q. Did you wire \$500,000 to Paul Meltzer on behalf of
3 Paulette Carpoﬀ?

4 A. On advice of counsel, I'm invoking my Fifth Amendment
5 right.

6 Q. Did you wire \$250,000 to Daniel Bakondi for -- on behalf
7 of Jeffrey Carpoﬀ?

8 A. On advice of counsel, I'm invoking my Fifth Amendment
9 right.

10 Q. Did you wire \$250,000 from your Iolta account to Segal and
11 Associates as a personal retainer for Jeffrey Carpoﬀ?

12 A. On advice of counsel, I'm invoking my Fifth Amendment
13 right.

14 Q. Mr. Strauss, as to any wires of the \$5 million from those
15 three entities -- Paul Meltzer, Daniel Bakondi, or the Segal
16 and Associates -- for whom were those transfers made?

17 A. On advice of counsel, I'm invoking my Fifth Amendment
18 right.

19 Q. And who instructed you to make those transfers?

20 A. On advice of counsel, I'm invoking my Fifth Amendment
21 right.

22 MS. SHOUN: Oh, Your Honor, I'm sorry. As a
23 housekeeping matter, the second document handed up to
24 Mr. Strauss, I do think he identified it, but has invoked his
25 Fifth Amendment as to any other substantive answers on it, but

STRAUSS - CROSS-EXAMINATION

1 I would ask the Court still admit it as an exhibit.

2 **THE COURT:** Exhibit -- is there an objection?

3 **MR. OVERSTREET:** Without objection.

4 **THE COURT:** Exhibit Number 2 is admitted without
5 objection.

6 **BY MS. SHOUN:**

7 **Q.** Mr. Strauss, I'm going to go back to that exhibit. I'm
8 sorry. I'm jumping around a little bit. That's the second
9 exhibit, the email that appears to come from you at your law
10 firm dated March 25th. You indicated in that email that under
11 the purchase agreement, the fund was obligated to pay Solutions
12 for mobile solar units. Did you make that statement?

13 **A.** On advice of counsel, I'm invoking my Fifth Amendment.

14 **Q.** Did somebody write that statement for you?

15 **A.** On advice of counsel, I'm invoking my Fifth Amendment
16 right.

17 **Q.** Mr. Strauss, how many mobile solar units were, in fact,
18 delivered under any purchase agreement entered into between the
19 fund and any third party?

20 **A.** On advice of counsel, I'm invoking my Fifth Amendment
21 right.

22 **Q.** Mr. Strauss, what action did you undertake to ensure that
23 any mobile solar units had been delivered?

24 **A.** On advice of counsel, I'm invoking my Fifth Amendment
25 right.

STRAUSS - CROSS-EXAMINATION

1 Q. what action did you take whatsoever, Mr. Strauss, to
2 ensure that any of the wire transfers out of the \$5 million
3 sent to your Iolta account were proper?

4 A. On advice of counsel, I'm invoking my Fifth Amendment
5 right.

6 MS. SHOUN: Beg the Court's indulgence just one
7 moment.

8 (Pause.)

9 MS. SHOUN: Your Honor, if I may approach the
10 witness?

11 THE COURT: You may.

12 BY MS. SHOUN:

13 Q. Mr. Strauss, I'm going to hand to you what appears to be
14 an email sent from Peter Strauss at
15 pstrauss@thestrausslawfirm.com to Armando Gomez on March 27th,
16 2019 at 12:58 p.m., and I'll ask you if you recognize that
17 email.

18 A. On advice of counsel, I'm invoking my Fifth Amendment
19 right.

20 Q. Mr. Strauss, why would -- to what letter are you referring
21 in that email to Mr. Armando, that you indicate that you have
22 just received a letter? which letter would that be?

23 A. On advice of counsel, I'm invoking my Fifth Amendment
24 right.

25 Q. Could that be the follow-up letter from our -- from Nexsen

STRAUSS - CROSS-EXAMINATION

1 Pruet on behalf of the fund again asking you for an accounting
2 as to the money?

3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.

5 Q. Did you receive a response from Mr. Gomez?

6 A. On advice of counsel, I'm invoking my Fifth Amendment
7 right.

8 MS. SHOUN: Your Honor, the -- I don't know that the
9 witness identified the document, but we would ask that it be
10 admitted. We move it be admitted.

11 THE COURT: That's number 3?

12 MS. SHOUN: Yes, sir.

13 THE COURT: Is there an objection?

14 MR. OVERSTREET: Without objection.

15 MR. WOOTEN: Your Honor, I apologize. Patrick Wooten
16 again on behalf of some of the transferees. I don't know what
17 documents are being passed around, but it sounded like these
18 may be privileged documents. Maybe these are documents where
19 third parties are on the -- but I just want to make sure our
20 privilege objections are preserved.

21 THE COURT: Of course you're not a party to this
22 proceeding. You're a recipient. I'm going to give you every
23 chance to be heard on matters. The -- it appears to me that --
24 and this was raised by Mr. Overstreet earlier. It appears
25 these documents in which he is -- he is receiving funds and

STRAUSS - CROSS-EXAMINATION

1 he's distributing funds, he's working as an escrow agent. He's
2 just like a bank. He's not functioning as a lawyer at the
3 time, and those would not be privileged. These are escrow
4 payments. So -- but I note your objection for the record.

5 Yes, sir?

6 **MR. OVERSTREET:** Your Honor, very briefly, just so
7 that the record is clear. I appreciate your noting the fact
8 that I also had some concerns about turning all this
9 information over that could have privileged implications, and I
10 provided to opposing counsel and the Court a notebook of
11 emails, which my understanding is Your Honor has reviewed and
12 come to the conclusion that there aren't any privileges
13 associated with those communications, thus allowing me to
14 produce it in full court.

15 **THE COURT:** Right. They -- my review of the
16 documents indicated that they were simply a processing of cash
17 through the escrow account of the Strauss Law Firm, and that he
18 was serving as an escrow agent, and that that would not be
19 subject to privilege. So I did review those, and I ruled they
20 were -- they were not protected by privilege.

21 Okay. Anything further?

22 **MS. SHOUN:** Just a couple more, Your Honor, if the
23 Court will allow.

24 **BY MS. SHOUN:**

25 **Q.** Mr. Strauss, were you ever acting pursuant to some escrow

STRAUSS - CROSS-EXAMINATION

1 12 : 3 5 1 agreement with the fund?

2 12 : 3 5 2 A. On advice of counsel, I'm invoking my Fifth Amendment
3 12 : 3 5 3 right.

4 12 : 3 5 4 Q. Mr. Strauss, were you or your law firm ever -- and I'm
5 12 : 3 5 5 sorry. In the previous question, that should have applied to
6 12 : 3 5 6 you and your law firm, just so we understand. Is that fair?
7 12 : 3 5 7 Same answer?

8 12 : 3 5 8 A. Yes.

9 12 : 3 5 9 Q. All right. Did you or your law firm ever act pursuant to
10 12 : 3 5 10 any agreement as an escrow agent for DC Solar Solutions?

11 12 : 3 5 11 A. On advice of counsel, I'm invoking my Fifth Amendment
12 12 : 3 5 12 right.

13 12 : 3 5 13 Q. Did you or your law firm ever act pursuant to any sole --
14 12 : 3 5 14 any escrow agreement on behalf of Paulette and/or Jeffrey
15 12 : 3 5 15 Carpoff?

16 12 : 3 5 16 A. On advice of counsel, I'm invoking my Fifth Amendment.

17 12 : 3 5 17 Q. Mr. Strauss, what action did you undertake to ensure that
18 12 : 3 5 18 any of the wires out of your Iolta account of that \$5 million
19 12 : 3 6 19 were proper?

20 12 : 3 6 20 A. On advice of counsel, I'm invoking my Fifth Amendment
21 12 : 3 6 21 right.

22 12 : 3 6 22 MS. SHOUN: Very quickly, Your Honor.

23 12 : 3 6 23 (Pause.)

24 12 : 3 6 24 MS. SHOUN: That's all I have, Your Honor. Thank
25 12 : 3 6 25 you.

STRAUSS - CROSS-EXAMINATION

1 THE COURT: Any questions from the defense?

2 MR. OVERSTREET: No, Your Honor.

3 THE COURT: You may step down, sir.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURTROOM DEPUTY: Sir, may I have those
7 documents? Thank you.

8 THE COURT: Mr. Strauss, I'm going to put you on
9 notice that I intend to advise the South Carolina Supreme Court
10 that you took the Fifth Amendment today in a matter involving
11 potential criminal activity, and I would suggest you
12 self-report your appearance here today and your actions.

13 Let me address if I might and hear from some of
14 the recipients. I know you have an active interest here, and
15 you've had very little time to address these issues. My goal
16 is to preserve the status quo in a way that preserves these
17 funds to make a determination of who is the rightful owner of
18 these and whether or not it's within the DC Solar bankruptcy.
19 I don't know the answer to that. I'm working that through.

20 On the record, I want to say that I have been in
21 touch with Judge Beesley in the Nevada Bankruptcy Court, and
22 we're working in concert with each other on this. There's no
23 interest of this Court of usurping the important rights of the
24 Bankruptcy Court and the rights of the creditors in bankruptcy.
25 On the other hand, to the extent these monies are outside the

1 estate of the bankruptcy, then it's my responsibility to
2 address the claims here. That's as simple as I can make it.

3 I want to afford everyone an opportunity to have
4 the time to review these issues. I have a -- I presently have
5 an issue, the TRO, and have extended it to the recipients, and
6 the question then is -- and I'm trying to maintain the status
7 quo. Does anyone while we're sorting this out have an
8 objection to the continuation of the TRO? Let the record show
9 no one has responded. The TRO is going to continue.

10 I want to afford the recipients an adequate time
11 to investigate this matter. I've had issues raised. I've now
12 gotten two responses in. One I haven't -- I'll be candid with
13 you -- from a Mr. Bakondi, I have not had a chance to review.
14 It arrived just moments before the hearing. I did receive one
15 earlier today from Mr. Wooten. And Mr. Wooten, let me tell you
16 a piece of information I'm interested in, and perhaps you might
17 have -- help us on this or provide -- or you might be able to
18 answer this question at a later point if you don't know it now.
19 I'm trying to reconstruct how the monies left Fund XXXV and
20 ended up in the Strauss Law Firm. Did it pass through any
21 other accounts? Who moved -- who gave the instructions from
22 the fund's bank to transfer these monies to the Strauss Law
23 Firm? How did the Strauss Law Firm characterize these funds in
24 its own accounts? That is, who was the owner in this -- the
25 Strauss Law Firm identified as the owner of these funds?

1 Those are issues that go to whether this was
2 actually an asset of DC Solar. I note that DC Solar did not
3 list Fund XXXV as one of its 20 top creditors, and it surely
4 would have been should the \$5 million had been -- if the \$5
5 million had been paid and services not delivered, it would have
6 been a debt, and it was not listed. Has there since then been
7 a filing, a listing of assets by the -- by the debtor? Has
8 there been a filing in Bankruptcy Court of assets?

9 MR. WALLACE: Your Honor, Bruce Wallace for the
10 plaintiffs. We do not believe so.

11 THE COURT: I have not identified it on ECF. So the
12 fair question is number 1, is this an asset of DC Solar? And
13 even if it is, it doesn't ultimately dispose of the issue of
14 who is entitled to these funds. I mean, that needs to be
15 sorted out, about the role of these various law firms, and they
16 have had an understandable interest in keeping the monies they
17 have received. The Court's concern is are these -- did they
18 receive funds acquired by conversion? And if so, did they know
19 or should have known that these were of questionable origin?

20 We know that the day before the transfer, the
21 Federal Government had seized the accounts, all the accounts of
22 DC Solar. So I'm not sure how it could have flowed into a DC
23 Solar account. Perhaps there are some that the Government
24 didn't know about, but I'm trying to sort all that out.

25 I understand the argument ably made by

1 Mr. Wooten and his law firm that -- that the funds from -- in
2 the accounts of Fund XXXV were payable, but were they paid by
3 the fund? That's different. was it paid and -- for those
4 mobile solar generators? Or did someone not yet identified
5 reach into those accounts, perhaps improperly, and convert it
6 to their own use? Pretty important question here.

7 Now, even after all of that, the question about
8 who sorts that out, whether we're subject -- whether these
9 funds are subject to the -- are subject to the bankruptcy is
10 something I intend to continue my dialogue with Judge Beesley
11 and the fact finding I'm trying to do here.

12 I think we ought to have an evidentiary hearing
13 at some point for -- to try to answer these questions as
14 definitively as we can. And, Mr. Overstreet, could we -- I'm
15 going to enter an order requiring the Strauss Law Firm to
16 produce to me documents showing how this \$5 million was treated
17 in its account, how it was designated in the account. Do you
18 understand what I'm asking?

19 **MR. OVERSTREET:** Yes, sir.

20 **THE COURT:** And I think that will give us one piece
21 of information. I think it is important to determine how --
22 who gave the instructions that the money leave the fund and go
23 to the Strauss Law Firm. There was a -- I understand -- was
24 that a wire I saw on a bank account? Was that a wire transfer,
25 Ms. Shoun?

1 MS. SHOUN: Into the Strauss Iolita?

2 THE COURT: Yes.

3 MS. SHOUN: Yes, sir, Your Honor.

4 THE COURT: From?

5 MS. SHOUN: As I understand it, it was from Paulette
6 Carpoff, Your Honor. And I may --

7 THE COURT: From Paulette Carpoff personally?

8 MS. SHOUN: Yes, sir. I may be able to actually --
9 if the Court will give me one minute, I may be able to produce
10 a copy of that for Your Honor.

11 THE COURT: Okay. You may take a moment.

12 (Pause.)

13 MS. SHOUN: May I approach, Your Honor?

14 THE COURT: You may. Do we know, Ms. Shoun, why
15 Ms. Paulette Carpoff would have authority to move money out of
16 the -- of an independent, freestanding fund, investment fund?

17 MS. SHOUN: No, sir.

18 THE COURT: I have not been provided a copy of any --
19 I know I have the -- this equipment sales agreement and a note.
20 Do we have an LLC organizational document?

21 MS. SHOUN: Yes, sir.

22 MR. WALLACE: Just one second, Your Honor.

23 MS. SHOUN: We have -- I think we have a copy, Your
24 Honor, an extra copy. If Your Honor doesn't mind, I think we
25 probably printed it on two-sided pages.

1 THE COURT: I can survive that.

2 MS. SHOUN: Okay. If I may approach.

3 THE COURT: I want to -- I want everybody to be on
4 the same page here, and I want the plaintiff to provide to the
5 nine recipients the documents we're talking about here. I
6 think they need access to this.

7 MS. SHOUN: Certainly, Your Honor.

8 THE COURT: I want to make sure they have -- and to
9 the extent when we have a hearing, I will say to the
10 recipients' counsel, we'll have a deadline for you to produce
11 to the parties any documents that may shed some light on this.

12 It may be worthwhile if you don't have -- you
13 have not yet done this, is to perhaps depose the bank official
14 involved to figure out exactly what happened.

15 MS. SHOUN: Yes, sir.

16 THE COURT: Do we know whether Paulette Carpoff has
17 any role with Investment Fund XXXV?

18 MS. SHOUN: She does not. Any knowledge we have of
19 this fund, Your Honor, she does not. This fund was entered
20 into -- or this fund was created, if you will, the LLC was
21 created in late November of 2018, and then, of course, this
22 raid upon the Carpoffs and the DC Solar entities was made on
23 December 18th. There was no representation that the Carpoffs
24 were involved, and, in fact --

25 THE COURT: Wasn't there a provision about

1 independence? There would be a fiduciary issue; would there
2 not be?

3 MS. SHOUN: Your Honor, Section 3.145 -- v. Oh, it's
4 v. Sorry.

5 THE COURT: Three point --

6 MS. SHOUN: 3.14v, as in victory.

7 THE COURT: Thank you. Give me a second. "The
8 managing member is not an affiliate of the sponsor. The
9 managing member has not entered into any contract agreement,
10 understanding, or arrangement with the sponsor, any affiliate
11 of the sponsor relating to mobile solar facilities other than
12 the transaction documents."

13 So I want everyone to sort of understand where
14 I'm going here. I'm just trying to figure out was this some
15 kind of regular transfer of a financing relating -- funds
16 relating to an equipment sale in the ordinary course of
17 business, or was this -- which is suggested by the recipient
18 filing I've had -- or was this an irregular transaction
19 facilitated by someone with no authority to take the funds, and
20 that the funds were essentially a conversion for the personal
21 use of the person who took the fund?

22 MS. SHOUN: Of course, Your Honor. And we would --

23 THE COURT: That is to me the question, and I don't
24 want to suggest for a moment -- I don't have any suggestion
25 that any of these recipients would have been involved in that

1 end of the transaction, but if, in fact, these are converted
2 funds, then -- and are not funds of DC Solar, then why would we
3 not be here to sort this out? I mean, if they are, I think
4 they should be in Nevada. I think that's exactly where they
5 should be, if they're assets of DC Solar. There might be other
6 arguments why they are assets of DC Solar, but I do think
7 having looked at the sales agreement, those funds were payable,
8 but not paid. I mean, no one had a right to snatch the money
9 out of the fund.

10 I do think, Ms. Shoun, it would be helpful to
11 know more about exactly the instructions that the CTBC Bank
12 had --

13 MS. SHOUN: Yes, sir.

14 THE COURT: -- and what authority it had --

15 MS. SHOUN: Yes, sir.

16 THE COURT: -- to transfer those funds to the Strauss
17 Law Firm.

18 MS. SHOUN: Yes, sir.

19 THE COURT: I think that is a missing piece here
20 that -- we see here it is from Paulette Carpoff. I presume
21 she, like Mr. Strauss, is going to take the Fifth, so you're
22 not going to get it from her, but the bank should have some
23 documentation of its authority, and if there is some authority,
24 then we need to know about that.

25 MS. SHOUN: Yes, sir.

1 THE COURT: If it's some legitimate authority to act
2 on behalf of the fund or some other instructions they have a
3 right to go grab the money on behalf of Solar -- DC Solar, but
4 Ms. Carpoff is not -- is a different -- is an individual, and
5 DC Solar is a corporate entity.

6 MS. SHOUN: Exactly, Your Honor. And one reason we
7 directed Your Honor's attention to that particular section
8 mentioned earlier, and then the 3.17 as well, 3.17M, where
9 actually, Your Honor, there were affirmative representations
10 that there was no affiliation with the sponsor, and the sponsor
11 being the DC Solar entity.

12 THE COURT: I would think it would present serious
13 fiduciary issues if they're merged.

14 MS. SHOUN: Exactly.

15 THE COURT: They're supposed to be an arm's length
16 transaction.

17 MS. SHOUN: Yes, sir.

18 THE COURT: And -- but I want to afford everyone an
19 opportunity to be heard, and I'm not -- I'm not trying to make
20 any rush to judgment here. I do think we need to set up a
21 mechanism where we can make certain reasonable factual
22 findings.

23 Mr. Wooten, you got any suggestion how much time
24 you folks might need?

25 MR. WOOTEN: We were asking for like 10 days. You

1 know, I -- we obviously hadn't heard Your Honor's comments when
2 we submitted that, but --

3 THE COURT: I'm trying to focus you on where, you
4 know, I think the issue is here.

5 MR. WOOTEN: Right.

6 THE COURT: And I will say I don't think we all have
7 a definitive answer yet about where it is, but if there are
8 funds out there that were unlawfully taken and converted and
9 then distributed to third parties, that's a -- that's not a
10 DC -- that's not a DC Solar issue if it never passed through DC
11 Solar, never had a purpose of being related to DC Solar. It
12 was simply a conversion by some person or entity other than DC
13 Solar. Then that doesn't answer the question of the
14 entitlement of these nine recipients. That's a whole 'nother
15 issue. We'd have to sort that out, but -- but they would be --
16 you know, they would have been paid with -- if that scenario is
17 correct -- with stolen money. And the question is do they know
18 or have reason to know that there was some question about those
19 funds, particularly in light of the fact that the day before
20 the Federal Government had acted to seize all accounts?

21 Yes, sir. You wish to speak?

22 MR. ALLEN: Yes, sir, Your Honor. Just from a timing
23 point of view, I start a trial on Friday in State Court. I'll
24 be in trial all week at least, so from a timing point of view,
25 I would ask for at least 15 days to be able to respond.

1 But I've also got some -- the other concern I've
2 got is that any knowledge that might be imputed to Strauss Law
3 Firm that therefore may be imputed to Hamilton Captive
4 Management LLC. The problem that comes -- the stolen funds
5 question we've got is really that this fiduciary issue doesn't
6 belong here, because the money was transferred from a bank
7 that's not -- has no association with any of the parties that
8 are defendants in this case. We think the plaintiffs should be
9 in the best position to know that information, as to whether or
10 not they were -- where they were transferred from and who had
11 -- it's their account.

12 **THE COURT:** Let me say, I would say under normal
13 circumstances that you are absolutely correct, but they get
14 a -- they learned subsequently that someone has taken \$5
15 million out of their account, someone who doesn't have the
16 authority to do that.

17 **MR. ALLEN:** Who's not a defendant here in this action
18 is the problem.

19 **THE COURT:** Correct, but who has taken the money and
20 delivered it to the Strauss Law Firm, and they brought an in
21 rem action for their \$5 million. And what you do there is you
22 bring all the claimants in, and you sort it out. And I don't
23 know whether the plaintiffs' assessment of the facts is
24 correct. I just don't know the answer to that. And -- but I
25 think it's an important issue, and I want to afford everyone

1 the opportunity, all nine recipients -- you know, many of them
2 are across the country and so forth. I want to afford
3 everybody an opportunity to make a reasonable inquiry to
4 determine the provenance of these funds.

5 And once we sort that issue out, we got to sort
6 out is that subject to the bankruptcy estate? Is that part of
7 DC Solar? And -- and we'll have to sort out who should decide
8 that. I think both -- if that were true, the Bankruptcy Court
9 and District Court would have potentially concurrent
10 jurisdiction to determine that. The question is who should do
11 it? And I want to just discuss that with Judge Beesley. I
12 want to sort it out, but I want to know the facts first,
13 because the facts may establish that it is unquestionably a DC
14 Solar asset. I just don't know right now. I certainly have
15 had facts that raise a lot of concerns that there was something
16 untoward here. Now, whether that is, in fact -- when we
17 actually sort it all out that's true, but there's certainly
18 enough here -- as they say, where there's smoke, there may be
19 fire. I want to see if there's actually fire here.

20 **MR. ALLEN:** The concern from Hamilton Captive
21 Management's request from Your Honor is this. It's now going
22 to be accused because of the role of Mr. Strauss in his role
23 with Captive Management. Mr. Strauss in his attempts to
24 cooperate obviously has to do so under his own entities there,
25 and in doing so, there was some questions whether or not we

1 would be cooperating, basically putting everything on hold.
2 And I'm here to represent we'll be more than happy to do that
3 in cooperation --

4 **THE COURT:** What I'm trying to do is -- I understand
5 that the Strauss Law Firm is prepared to pay to the Court, a
6 pretty reliable place to put money -- the 1.5 million received
7 while we sort this out.

8 Now, these other law firms, I want -- these
9 other folks, I want to sort out from them, hear from them about
10 things before I -- and that's why I said if you don't object to
11 the TRO continuing, there's not an objection, otherwise I'm
12 going to issue an injunction, because I'm trying to preserve
13 those funds while we have time to figure this out.

14 **MR. ALLEN:** It directly affects 150 other
15 corporations as it relates to Hamilton Captive Management,
16 because those funds were in the normal course of business.
17 They were purchasing an insurance contract that was
18 administered. It was bound, and so the reality is that I need
19 an order of the Court to be able to do that is all I was
20 putting on the record.

21 **THE COURT:** I'll give you an order.

22 **MR. ALLEN:** Thank you, Your Honor.

23 **THE COURT:** I'll provide you the order.

24 Mr. Wooten, do you have any thoughts?

25 **MR. WOOTEN:** Yes, I do. I guess as far as the amount

1 of time, the more time you can provide us, the better.

2 **THE COURT:** I'm thinking 30 days frankly. I just
3 think everybody needs a little bit of time to catch their
4 breath here. If there's not an objection to the continuation
5 of the TRO, otherwise I'm going to issue an injunction. That's
6 why -- the lawyers are here representing about half of these
7 recipients. I don't mind issuing a preliminary injunction
8 unless -- if the parties object to the continuation of the TRO.

9 **MR. WOOTEN:** And so the order Your Honor would enter
10 would be one that says essentially the same thing that the
11 order issued the other day did --

12 **THE COURT:** Don't spend the money. Don't transfer
13 it. I'll make a determination later whether you're going to
14 have to pay it into the Court.

15 **MR. WOOTEN:** Okay. I just -- one concern I have
16 frankly, Your Honor, is I've not had this situation come up
17 before where a client is not a party, you know, not served with
18 process, and then comes just sort of as an invitee to a
19 hearing, and we're being asked obviously about an order that
20 would affect their interests, and so I don't want to waive any
21 objections. Like you said, I want to catch my breath, and so I
22 want -- I do want to object to any attempt to exercise
23 jurisdiction over these clients --

24 **THE COURT:** Does your client intend to honor my
25 order?

1 MR. WOOTEN: My --

2 THE COURT: Your client regarding the maintenance of
3 the funds, do they intend to do that?

4 MR. WOOTEN: Yes. Your Honor, we -- we are willing
5 to -- here's what I will say. I don't want to say we intend to
6 honor it if doing that results in some sort of waiver.

7 THE COURT: You're not waiving anything. I'm trying
8 to maintain the status quo to give your client the chance
9 you've asked for to explain it.

10 MR. WOOTEN: Right.

11 THE COURT: And give you enough time to actually
12 figure it out.

13 MR. WOOTEN: Right.

14 THE COURT: You're trying to figure this out. You
15 don't know much more than I do, Mr. Wooten. I mean, we all --
16 that's very clear. All of us are struggling to figure out what
17 the facts are. We need time to figure this out. I can't have
18 these funds transferred away, expended while we're trying to
19 figure it out. I'm going to preserve it. I think I've heard
20 enough to say there's something perhaps untoward happening
21 here, and it appears to me that it is important to preserve the
22 status quo while we figure it out, protect everybody's rights
23 here. That's all I'm trying to do.

24 MR. WOOTEN: Okay. Well, so in light of that, Your
25 Honor, I would agree that our clients will maintain the status

1 quo with respect to the money that they have, but not waiving
2 any objections --

3 **THE COURT:** Nobody is waiving any -- including
4 jurisdiction right at this moment. All I'm doing is preserving
5 the money to figure it out, and then somewhere these law firms
6 are going to have to deal either with me or the bankruptcy
7 judge about the -- their entitlement to funds. To the extent
8 it's an asset of DC Solar, that's one issue. If it's stolen
9 funds, then you get to the issue of did they know or should
10 have known, kind of holder in due course, all those issues that
11 need to be sorted out. And I want to -- I'm going to assure
12 that if I'm the one deciding that, I'm going to give everybody
13 a full opportunity to be heard and a full opportunity to
14 investigate the facts.

15 **MR. WOOTEN:** So if I can just ask one question -- and
16 I normally wouldn't ask a question to the Court, but my
17 understanding is that there was, you know, this last minute
18 memorandum that we submitted to the Court.

19 **THE COURT:** Yes.

20 **MR. WOOTEN:** And in that document, East West Bank is
21 authorizing this 13 million some odd dollars to go to -- or to
22 go from the fund to DC Solar.

23 **THE COURT:** It's actually authorizing it to paying it
24 into the -- into the investment fund. That's how I understand
25 it, and then the manager of the fund needs to transfer it.

01:02 1 That's an extra step. Ms. Carpoﬀ does not have, the best I
01:02 2 can see, the authority to reach into the supposedly independent
01:02 3 investment fund and to take the money. There's an extra step
01:02 4 there. I've been trying to sort out did the manager do that?
01:02 5 Did the manager reach in and transfer it to Ms. Carpoﬀ? I
01:02 6 don't know the answer to that. But I have not -- I know that
01:02 7 the Nexsen Pruet law firm wrote the manager, who in a sort of
01:02 8 bewildering thing never wrote back. I mean, you're supposed to
01:02 9 be managing a fund, and \$5 million is missing, and you don't
01:02 10 respond to your client, to the investor, the principal investor
01:02 11 in the fund? How would that be? And so that raises questions
01:02 12 about what is actually going on there?

01:02 13 And so I think we need to figure out was that --
01:03 14 though the funds were -- were potentially payable at that
01:03 15 point, were they actually paid, and what are they going to be
01:03 16 paid for? They're for 325 solar generators. At this moment,
01:03 17 DC Solar has shut -- literally shut the lights oﬀ. They've
01:03 18 laid oﬀ their staﬀ. All their accounts have been ceased.
01:03 19 There's no way in the world they're ever going to perform.
01:03 20 This is not a normal equipment sale at this point. But if the
01:03 21 monies went into DC Solar, that would be one thing. You could
01:03 22 say, "Well, still you had this contract," but if it went to a
01:03 23 third party, and it was just snatched out of that account by
01:03 24 someone who has no right to do it, that is a very diﬀerent
01:03 25 situation, and whether that is exactly what happened here, we

01:03 1 need further -- we need further evidence.

01:03 2 I know the plaintiffs assert that. Is that
01:04 3 fair, Ms. Shoun, that you're asserting that basically
01:04 4 Ms. Carpoff took the money?

01:04 5 **MS. SHOUN:** We know -- what we know, Your Honor, has
01:04 6 been presented to this Court, and that is that -- quite
01:04 7 correctly the Court states that the authorization was for this
01:04 8 investment to be paid into fund, and that investment was paid
01:04 9 into fund. Then on the 18th of December, essentially
01:04 10 everything was frozen, seized by the Federal Government. No
01:04 11 mobile solar units were delivered. Then subsequently after
01:04 12 filing this action, we found that wire transfer made by
01:04 13 Ms. Carpoff directly into the Iolta account.

01:04 14 **THE COURT:** Mr. Wooten, have you been provided a copy
01:04 15 of this wire transfer?

01:04 16 **MR. WOOTEN:** Not that I know of.

01:04 17 **THE COURT:** I mean, this is why it's important that
01:04 18 you -- that we get everybody on the same page. I'm going to
01:04 19 send an order kind of -- I want the recipients to get all this
01:04 20 information, because --

01:04 21 **MS. SHOUN:** Yes, of course, Your Honor.

01:04 22 **THE COURT:** And then the recipients may have
01:04 23 information themselves relevant to you, and -- but I'm trying
01:05 24 to sort out how this money got moved from the fund to the
01:05 25 Strauss Law Firm. I think that is a very material thing, and

1 did it -- was it transferred to DC Solar in some way? I have
2 trouble imagining how that could have occurred, because DC
3 Solar was defunct at that point, literally defunct. The lights
4 were out, the staff was laid off, and all its accounts were
5 seized by the Federal Government.

6 MS. SHOUN: The day before the wire transfer took
7 place.

8 THE COURT: Literally the day before the wire
9 transfer.

10 MR. WOOTEN: And, Your Honor, one thing I'm not clear
11 on though is the -- this cash flow memorandum. My
12 understanding is that the East West Bank is not merely signing
13 this document authorizing --

14 THE COURT: They're the investor. They're an
15 investor into the fund. The fund holds the money to transfer
16 to DC Solar. The East West Bank is the investor.

17 MR. WOOTEN: Right.

18 THE COURT: So they've transferred -- as I understand
19 the documents -- and I'm prepared to be instructed otherwise
20 here -- is that as part of this agreement, East West Bank paid
21 into the fund monies for them to be transferred to DC Solar by
22 its manager to pay for 325 solar generators. Instead of the
23 manager -- this is what plaintiffs essentially showed by this
24 document. Instead of the manager, Halo Management, exercising
25 its authority to make that transfer, Mrs. Paulette Carpoff took

01:06 1 the money and transferred it to the Strauss Law Firm, and then
01:06 2 it was distributed what appears to be for the personal use of
01:06 3 the Carpoffs. That might be -- not saying it is -- potentially
01:07 4 a conversion of that money and not a -- so that's why I said
01:07 5 was this was a regular transaction, as you describe it in your
01:07 6 pleading, or is it an irregular one in which the action is
01:07 7 untoward?

01:07 8 I don't think it's fair -- I mean, I'm not
01:07 9 jumping on you, Mr. Wooten, because you don't have all the
01:07 10 facts, and I'm not sure any of us have all the facts, and we
01:07 11 need all those facts to sort this out, and I want to give
01:07 12 everybody enough time and enough opportunity to do it.

01:07 13 And I'm preparing as you look into it -- and I
01:07 14 say this for all the counsel for the recipients. If you -- if
01:07 15 you feel like you need discovery, talk to me about that. Let
01:07 16 me know that. I personally think that it may be useful for
01:07 17 someone to depose the folks at the bank.

01:07 18 **MS. SHOUN:** And, Your Honor, I was going to ask the
01:07 19 Court about that. We are happy to undertake that endeavor, but
01:08 20 to be frank with the Court, I'm not sure logistically how long
01:08 21 that would actually take. We are willing to undertake what we
01:08 22 need to do to present the facts sufficient to this Court to
01:08 23 make a determination as to where this needs to go.

01:08 24 **THE COURT:** I think it is important to know how --
01:08 25 what was the mechanism out of which and under which authority,

01:08 1 whoever acted -- it indicates here it's Ms. Carpoff -- under
01:08 2 what authority did she have? what was the -- I mean, the bank
01:08 3 must have had some -- you would think, some notion about the
01:08 4 authority for her to move \$5 million out of an account she did
01:08 5 not own. what was their understanding? And maybe there will
01:08 6 be something that is very -- that indicates that she somehow
01:08 7 had the authority of DC Solar -- I don't know that -- to act as
01:08 8 an agent of DC Solar, but -- or -- I don't think she could act
01:09 9 as the manager, because that would violate the independence of
01:09 10 the manager.

01:09 11 MS. SHOUN: And the very terms of the agreement.

01:09 12 THE COURT: And the very terms of the agreement. It
01:09 13 just -- this is a little bit of a confounding -- and I will say
01:09 14 to Judge Beesley, it's confounding to him trying to figure out,
01:09 15 and putting all of this together.

01:09 16 MS. SHOUN: And frankly, Your Honor, there may be
01:09 17 occasions where -- again, I don't know what the Court
01:09 18 envisions, but we would like the opportunity again to pursue
01:09 19 additional discovery, and it may be directed to some of the
01:09 20 recipients as well as to --

01:09 21 THE COURT: Let's -- at this point, let's figure out
01:09 22 whether this is in the estate. I want to leave the recipients
01:09 23 out of it for that purpose right now.

01:09 24 MS. SHOUN: Yes, sir.

01:09 25 THE COURT: Let's figure out is this an asset or not

01:09 1 of DC Solar? That's the first issue. And then if it's not, I
01:09 2 need then to decide am I really the one to decide it's not an
01:09 3 asset, or is that Judge Beesley's responsibility? I need to --
01:10 4 and I want to work collaboratively with the Bankruptcy Court on
01:10 5 this. And then to the extent that it is not an asset of DC
01:10 6 Solar, then we've got to sort out well, what right do these
01:10 7 recipients have to retain funds that were the property of
01:10 8 another person who had their funds converted?

01:10 9 Yes, Mr. Wooten?

01:10 10 **MR. WOOTEN:** One question I have is that going back
01:10 11 to the cash flow memorandum, my understanding is East West Bank
01:10 12 is not only authorizing the \$13 million payment to the fund.
01:10 13 They are also signing this document authorizing the fund to
01:10 14 transfer 12 million -- 12.5 million to DC Solar. And what I'm
01:10 15 wondering is is it disputed that the \$5 million is a portion of
01:10 16 the 12.5 that East West Bank is authorizing the fund to
01:11 17 transfer to DC Solar? Is that disputed in this case or -- that
01:11 18 would help me in talking to my clients.

01:11 19 **MR. ALLEN:** which brings up another matter, without
01:11 20 any finding that there's actually been an inappropriate
01:11 21 conversion, how do we then seize the funds here that are in my
01:11 22 client's possession without finding that there is at least a
01:11 23 risk of even being converted? We don't know that the actual
01:11 24 original quote-unquote conversion was an inappropriate action
01:11 25 at this time. We're asking, you know, executives of the people

1 that received these funds to testify regarding the receipt of
2 funds. We haven't even established there was an inappropriate
3 conversion.

4 **THE COURT:** well, we got somebody who doesn't appear
5 to have any right to do it taking the money. I mean, that's --
6 that's at least a color -- there's a very strong indication.
7 So if you're objecting to it, file an objection, and I'll enter
8 a preliminary injunction, and I'll make a finding under the
9 appropriate standards. I believe there's a likelihood of
10 success that this was improperly taken. If you wish to object,
11 file an objection. I will then enter an order.

12 **MR. WOOTEN:** well, and so I still --

13 **THE COURT:** All I'm trying to do is get control of
14 these funds so that -- and if these companies and law firms are
15 entitled to it, I'm certainly not going to mess with their
16 right to -- I will not -- I will not -- I certainly don't seek
17 to take any funds that are lawfully theirs.

18 I would just simply say if there was a
19 conversion and the circumstances are that all of these law
20 firms were fully aware of this Federal Court action a day or
21 two before, it's hard to understand how they would know or --
22 not know or have reason to know there might be something
23 questionable about these funds. That's the only question.

24 **MR. WOOTEN:** well, and one comment, Your Honor, about
25 the recipients knowing or should have known -- should have

1 known about anything questionable is, you know, it's not like
2 it was a coincidence that there was this raid and then
3 immediately thereafter the recipients were hired or retained.
4 They were obviously hired in response to the -- you know, the
5 raid. And so the reason they needed -- these folks needed
6 lawyers like Skadden was because there was a raid. So --

7 **THE COURT:** Right, but Mr. -- but Mr. Wooten, if DC
8 Solar had hired two guys to go into a bank and rob it and then
9 paid the law firms -- kind of an absurd situation, you would
10 say -- surely they'd have reason to know that they could not
11 keep the money, right? I mean, we would agree with that.
12 well, how about if they just did it by wire transfer? Instead
13 of having a firearm and two black masks when they go in, they
14 just wire transferred it by fraud. I don't know if that's the
15 case or not. I really don't. I'm just saying to you that
16 there are questions here that need to be answered, and I would
17 think the analysis eventually would be were they holders sort
18 of in due course without notice, or did they have reason to
19 know? Because the question is who is properly entitled to
20 these monies, the one who had money stolen or the company that
21 perhaps knew or should have known that it came from a
22 questionable source?

23 I mean, where exactly would the Carpoffs get
24 \$5 million if the Government seized all their money? I mean,
25 exactly where would that money come from? How would they have

01:14 1 it?

01:14 2 MR. WOOTEN: My understanding is that the Carpoffs
01:14 3 had the Strauss Law Firm, who was their lawyer, wire the money
01:14 4 to these law firms, and so --

01:14 5 THE COURT: Doesn't look like he's acting as a
01:14 6 lawyer. Looks like to me he's just an escrow agent. He's
01:15 7 getting the money in. He's sending it out. That's a whole
01:15 8 'nother question about exactly what he's doing in his role.

01:15 9 MR. WOOTEN: Right. Well, Your Honor, I appreciate
01:15 10 the time to respond to this. And the only other comment I
01:15 11 wanted to make, I know I interjected during the
01:15 12 cross-examination, but I'm not clear on the documents that were
01:15 13 turned over, and I guess I am concerned about there being
01:15 14 emails with, you know, Skadden or these other clients of
01:15 15 ours --

01:15 16 THE COURT: They're all about wire transfers.
01:15 17 They're wire -- it's simply -- it's nothing -- I haven't seen
01:15 18 anything substantive at all in them. They're simply
01:15 19 facilitating the transfers, the wire transfers from the Strauss
01:15 20 account into their account. It's really a tracing device,
01:15 21 trying to trace where the money went. We didn't know that
01:15 22 until the other day where it went. The Strauss Law Firm had
01:15 23 not provided any information to the plaintiffs about what
01:15 24 happened to their money, and that was -- and this is in
01:15 25 furtherance of determining where that money went. I didn't see

1 anything in it in which any of the law firms expressed anything
2 that would be remotely attorney-client communications.

3 MR. WOOTEN: Your Honor, when -- Your Honor, you've
4 laid out what your -- the gist of your concern, and I think I
5 understand the information you're generally looking for, but
6 I'm wondering if it would be helpful for you to sort of set
7 forth, "Here's the information I would like to hear from the
8 recipients."

9 THE COURT: Yeah, I think I should do an order, and I
10 need -- you know, we're doing something a little out of the
11 ordinary here. I mean, we are. We're trying to sort out an in
12 rem action. I don't know how many of you do in rem actions.
13 It's not terribly common to be suing over \$5 million. I
14 usually have it when they're drug seizures, you know, that kind
15 of thing, and everybody is invited to come in and claim whose
16 money it is and that car they seized. Nobody wants to show up,
17 of course. And, you know, this is a little bit different.

18 I want to make sure we have an orderly process
19 that provides due process to everyone, and I'm trying to break
20 it down. Step one is the question being raised, was there
21 anything irregular about this? Was there? Was there some
22 question? Because I think if it is an asset of DC Solar,
23 everybody pack up and go to Nevada. You're going to sort it
24 out there.

25 If it's -- if it's not, I think you're likely

1 going to stick around here and sort it out here. I mean,
2 that's sort of the way I view it.

3 And it may be that I will initially let -- have
4 Judge Beesley make that determination. I want to sort -- I
5 want to find out what the record shows us first, because we
6 just don't know -- we don't have enough information.

7 But this is a -- plaintiffs have raised a
8 legitimate question about how their money came from their
9 supposedly independent fund into the Strauss Law Firm by
10 Mrs. Carpoﬀ. If that, in fact, happened -- and we got a
11 document now that shows it -- exactly how did that happen?

12 **MR. WOOTEN:** And so Ms. Carpoﬀ had authority over
13 this account that was -- the fund's account somehow?

14 **THE COURT:** We don't think so. They don't think she
15 would have.

16 **MR. ALLEN:** That goes back to our original issue,
17 which is how is the jurisdiction not where she is to determine
18 whether or not that was an authorized transfer or not?

19 **THE COURT:** Because you're -- because Strauss is
20 here. Jurisdiction is here. The money arrived here. Got to
21 be somewhere. It passed out all around the United States.
22 Somebody's got to have it. You want to have us to go nine
23 different jurisdictions to figure it out? I don't think so.

24 Let's get to the merits here, folks. I want to
25 get to the bottom of this. I don't want all of us to waste a

1 lot of time on this. So step 1, we're not going to mess with
2 the recipients in terms of their entitlement to the money.
3 we'll save later whether -- we're going to sort out first
4 whether this is an asset of DC Solar or not.

5 Anyone else wish to speak?

6 **MR. BARKER:** Your Honor, again this is Jake Barker on
7 behalf of just one of the recipients, BH Venture Capital LLC.
8 while we are procedurally situated very similarly to
9 Mr. Wooten's clients, the factual reasoning behind why we're a
10 recipient, what our role was and our relationship to Solar is
11 quite different.

12 **THE COURT:** Tell me about that.

13 **MR. BARKER:** Well, Your Honor, BH Venture Capital is
14 an entity that was formed the purpose of acting as
15 debtor-in-possession lender in the DC Solar bankruptcy.

16 **THE COURT:** Okay.

17 **MR. BARKER:** My client and DC Solar executed a loan
18 term sheet through -- with the anticipation of providing
19 debtor-in-possession financing in that -- in the Nevada
20 bankruptcy.

21 **THE COURT:** And what happened to that?

22 **MR. BARKER:** For a variety of reasons --

23 **THE COURT:** Trustee objected.

24 **MR. BARKER:** The --

25 **THE COURT:** It was 3 million bucks, and trustee said

01:20 1 no way.

01:20 2 MR. BARKER: The lending relationship did not
01:20 3 manifest.

01:20 4 THE COURT: Correct.

01:20 5 MR. BARKER: However, in the term sheet there is a
01:20 6 call for a payment of \$50,000 nonrefundable underwriting fee to
01:20 7 cover the costs for underwriting these loans.

01:20 8 THE COURT: Did your -- did your client -- was it
01:20 9 aware that all the accounts of DC Solar had been seized?

01:20 10 MR. BARKER: I believe at some point they were made
01:20 11 aware of it. I could not say --

01:20 12 THE COURT: And that the Carpoiffs' personal accounts
01:21 13 had been seized and all the corporations had been seized?

01:21 14 MR. BARKER: I can't speak to their knowledge to
01:21 15 that.

01:21 16 THE COURT: And that 20 FBI agents had circled their
01:21 17 house and taken everything out of the house? You think they
01:21 18 might have known that since it was in all the newspapers out
01:21 19 there?

01:21 20 MR. BARKER: I could not tell you if they did or not.

01:21 21 THE COURT: Okay. I'm just saying your folks aren't
01:21 22 someone to just say, "Oh, my God. These people might have done
01:21 23 something wrong." I mean, it's just a fair question about what
01:21 24 they -- you know, do they have reason to question where these
01:21 25 monies came from?

1 we've already given the hypothetical. How about if
2 two bank robbers where they took the money and took it to your
3 client, would you be entitled to it? And, of course, everybody
4 says, "No, of course not."

5 **MR. BARKER:** This is not some rogue action. We
6 applied within the Bankruptcy Court to be a
7 debtor-in-possession.

8 **THE COURT:** Of course. Of course, but I'm just
9 saying your entitlement to that \$50,000, your right to hold
10 that \$50,000 may turn on the origins of those funds.

11 I mean, I take it that was a -- who was your
12 client going to have a loan -- was it going to be with DC
13 Solar?

14 **MR. BARKER:** I believe so, yes, Your Honor.

15 **THE COURT:** And was anybody else going to be on the
16 loan other than DC Solar?

17 **MR. BARKER:** well, I believe there's some related
18 entities in that bankruptcy, but I couldn't tell you.

19 **THE COURT:** Right, there are like eight different
20 entities.

21 **MR. BARKER:** I guess my point was --

22 **THE COURT:** Are the Carpoffs in bankruptcy
23 personally?

24 **MR. BAKER:** Sir?

25 **THE COURT:** Are the Carpoffs in bankruptcy?

01:22 1 MS. SHOUN: Not that we're aware, Your Honor.

01:22 2 THE COURT: Okay.

01:22 3 MR. BARKER: But to the matter at hand, Your Honor,
01:22 4 we again, like Mr. Wooten's clients, without waiving any of our
01:22 5 objections to jurisdiction and all of that, would think that
01:22 6 the time frame you kind of suggested with this kind of status
01:22 7 quo standstill order to kind of figure out where we are would
01:22 8 be helpful to us.

01:22 9 THE COURT: Yeah, I think what we need -- and I just
01:22 10 need to look at formally how to do this. I'm sort of
01:22 11 inclined -- let me ask these two captives, if I don't have you
01:23 12 pay it into the Court, can -- do you have any objection to
01:23 13 being subject to an injunction not to transfer the funds and to
01:23 14 hold it pending further action of the Court?

01:23 15 MR. ALLEN: We do not, Your Honor. The problem
01:23 16 simply is that we need some instruction. We'll fully
01:23 17 cooperate. That's all we need.

01:23 18 THE COURT: I hear you. I hear what -- you're being
01:23 19 perfectly reasonable about that. I'm just -- I'm just trying
01:23 20 to sort out a way in which -- in which we can get answers to
01:23 21 these questions without being unduly disruptive and without
01:23 22 dissipating the asset while we're litigating.

01:23 23 MR. ALLEN: My clients will cooperate and protect
01:23 24 those funds. We just want to make sure we're not stepping --

01:23 25 THE COURT: Let me ask the plaintiffs. I'm more

01:23 1 inclined rather than making them pay into the fund simply to
01:23 2 require them to hold the funds in a secure account and not to
01:23 3 expend them. Do plaintiffs have any problem with that?

01:24 4 MS. SHOUN: Your Honor, I think that's the order
01:24 5 that's currently in place.

01:24 6 THE COURT: Yeah, it's currently in place. I had
01:24 7 anticipated perhaps adding in paid into the court, but I'm just
01:24 8 kind of wondering now whether that's a step that's really
01:24 9 necessary to make right now.

01:24 10 MR. ALLEN: We'll report where it is.

01:24 11 MS. SHOUN: Well, it may be, Your Honor, that at the
01:24 12 end of whatever time --

01:24 13 THE COURT: Oh, it will be if your client or the
01:24 14 Bankruptcy Court --

01:24 15 MS. SHOUN: That may be the period in which --

01:24 16 THE COURT: -- the trustee may want to take
01:24 17 possession.

01:24 18 MS. SHOUN: Exactly. Exactly.

01:24 19 THE COURT: Depending on what we determine it to be,
01:24 20 whether it's an asset of DC Solar or not.

01:24 21 MS. SHOUN: Right.

01:24 22 THE COURT: Okay. I'm going to set out an order of
01:24 23 discovery, of disclosure requirements.

01:24 24 MS. SHOUN: Okay.

01:24 25 THE COURT: I want all recipients to know.

01:24 1 MS. SHOUN: Yes, sir.

01:24 2 THE COURT: Kind of everybody on the same page.

01:24 3 MS. SHOUN: Yes, sir.

01:24 4 THE COURT: So when we're handing up documents,
01:24 5 Mr. Wooten won't be saying, "What was that document?"

01:24 6 MS. SHOUN: Right.

01:24 7 THE COURT: I want everybody to have all the
01:24 8 documents.

01:24 9 MS. SHOUN: I didn't see it until this morning
01:24 10 myself.

01:24 11 THE COURT: Yeah, I understand that. And then
01:24 12 let's -- let's think about 30 days. If you need -- I will add
01:24 13 in the order that you have the authority to go depose --

01:24 14 MS. SHOUN: Perfect.

01:24 15 THE COURT: -- the folks at the CTBC Bank.

01:25 16 MS. SHOUN: Perfect.

01:25 17 THE COURT: Mr. Overstreet, you got something you
01:25 18 want to share with me?

01:25 19 MR. OVERSTREET: Very briefly, Your Honor. Just for
01:25 20 the record pursuant to my email to the Court last night,
01:25 21 Mr. Joe Griffith has been engaged by the Strauss Law Firm -- or
01:25 22 by Peter Strauss individually and apologizes that he can't be
01:25 23 here because he's out of the state, but intends to appear as
01:25 24 co-counsel with me.

01:25 25 THE COURT: Good.

01:25 1 MR. OVERSTREET: And was involved in the prep of this
01:25 2 hearing, so I just wanted that to be on the record, Your Honor.

01:25 3 THE COURT: Well, Mr. Griffith is a fine attorney.
01:25 4 He practices in front of me regularly. I know him well.

01:25 5 Yes? Anything further?

01:25 6 MS. SHOUN: Well, just about a matter of
01:25 7 clarification, Your Honor. We are more than happy to provide
01:25 8 the documents, the relevant -- or what Your Honor sees as
01:25 9 relevant to every recipient. We're happy to do that. I just
01:25 10 want to make sure that I understand what Your Honor sees as
01:25 11 those.

01:25 12 We have the wire indication from Ms. Carpoﬀ.
01:25 13 We have what appears to be the wire receipt -- and I'm not a
01:25 14 bank lawyer, so I'm probably not using the right terminology
01:25 15 there -- where it went into the Strauss account. We have the
01:26 16 wire transfer forms that were provided by the Strauss Law
01:26 17 Firm's counsel on Monday. We're happy to distribute those if
01:26 18 the recipients don't have them.

01:26 19 THE COURT: Yeah, and I think these -- you know, the
01:26 20 LLC.

01:26 21 MS. SHOUN: The LLC operating agreement. The
01:26 22 purchase agreement.

01:26 23 THE COURT: The documents Mr. Wooten was talking
01:26 24 about with the page, the document with the funds, the -- the
01:26 25 equipment sales agreement.

01:26 1 MS. SHOUN: Purchase agreement, yes, sir.

01:26 2 THE COURT: I just think everything needs to be --
01:26 3 everybody needs to be on the same page, and then if everybody
01:26 4 knows that, then they can go find other information about,
01:26 5 "Hold it a minute. You think it's this, but it's actually
01:26 6 something else. It may look this way, but it's not." Then we
01:26 7 want to know that. We want to get it right. Nobody is -- you
01:26 8 know, this Court does not have a dog in this fight.

01:27 9 MS. SHOUN: Yes, sir.

01:27 10 THE COURT: I'm just trying to sort out the fair and
01:27 11 just disposition of this. It's either your client's funds, or
01:27 12 you're a creditor in the bankruptcy.

01:27 13 MS. SHOUN: Right. Exactly.

01:27 14 THE COURT: I mean, that's one of the two things.
01:27 15 And of course we know that part of the money also went to DC
01:27 16 Solar, the initial monies, and --

01:27 17 MS. SHOUN: And those are --

01:27 18 THE COURT: And those are -- it makes you a creditor
01:27 19 in the bankruptcy as to those. The question is is the
01:27 20 additional 5 million part of that.

01:27 21 MS. SHOUN: Exactly.

01:27 22 THE COURT: That's the only question.

01:27 23 MS. SHOUN: Your Honor, there may be information or
01:27 24 we have reason to believe there may be information in the hands
01:27 25 of some of the recipients, and I understand Your Honor's order

1 leave their entitlement as to these funds out of it now.

2 However, we have reason to believe there may be information in
3 the hands of some recipients that may help to answer this
4 Court's questions as to the flow of the monies, if you will.

5 THE COURT: well, tell me exactly -- I mean, I'm most
6 interested how the money got out of the fund and into the
7 Strauss Law Firm.

8 MS. SHOUN: Precisely.

9 THE COURT: And if you think one of the recipients
10 had knowledge of that or played a role with that, that would be
11 important information, but you're going to have to make a
12 showing to me that they -- more than just saying, "I'm going to
13 do a little fishing expedition by starting to depose these
14 people." You're going to have to show me something first. I'm
15 not going to authorize that now, but if you have documents you
16 want to -- you want to make the point, what we're going to do
17 is you're going to make a motion, and I will let people respond
18 who may be affected.

19 MS. SHOUN: Okay.

20 THE COURT: And then I'll make a determination about
21 whether, you know, the -- let's be candid. To the extent your
22 hypothesis is correct, anybody involved in the transaction
23 potentially has criminal implications tied to them. If they're
24 actually involved in converting the funds --

25 MS. SHOUN: I see, Your Honor. Yes, sir.

01:29 1 THE COURT: And I -- you know, I haven't seen any
01:29 2 indication up to this point that any of the recipients --
01:29 3 there's nothing you've shown me that suggests that.

01:29 4 MS. SHOUN: Exactly, Your Honor, but again, we have
01:29 5 this huge gap, as Your Honor has pointed out a couple of times,
01:29 6 as to how did it leap from fund to Carpoff to Strauss. And we
01:29 7 at least have some documentation that it was in the fund, and
01:29 8 we have some documentation that Paulette Carpoff somehow
01:29 9 managed to wire it out to Strauss, but other than what may be
01:29 10 in the documents presented to us this morning -- and frankly, I
01:29 11 haven't had an opportunity to look at all of those, as Your
01:29 12 Honor knows -- we don't know if there may have been some other
01:29 13 party involved in that gap.

01:29 14 THE COURT: well, I want some indication before I
01:29 15 have you going after these law firms.

01:29 16 MS. SHOUN: Yes, sir. And we don't -- we're not even
01:29 17 at this point --

01:29 18 THE COURT: It looks like to me they're all being
01:29 19 retained. I think that was the point that was being made.
01:29 20 They were being retained in response to the federal action
01:29 21 which had occurred.

01:30 22 MS. SHOUN: The day before.

01:30 23 THE COURT: The day before. Okay? So, you know,
01:30 24 let's get to the bottom of that. Let's leave the recipients --
01:30 25 if you've got evidence to suggest the recipients may have been

01:30 1 part of a conspiracy in that regard, I'd be glad to proceed,
01:30 2 but up to this point, I haven't seen that, and I'm not
01:30 3 authorizing a deposition. I'll put it in writing in an order.

01:30 4 MS. SHOUN: And, Your Honor, I don't think at this
01:30 5 point we would even anticipate maybe a deposition of any of the
01:30 6 recipients, but if they have -- again, if they would have
01:30 7 documents much like the Court ordered the Strauss Law Firm to
01:30 8 produce that would indicate the flow of that money --

01:30 9 THE COURT: well, I haven't seen anything, but it
01:30 10 looks like to me what you've given me so far is I see the CTBC
01:30 11 Bank, which for the record is the holder of the funds for
01:30 12 the -- for the Fund XXXV.

01:30 13 MS. SHOUN: Yes, sir.

01:31 14 THE COURT: I see money going, landing at Strauss
01:31 15 from CTBC Bank --

01:31 16 MS. SHOUN: Yes, sir.

01:31 17 THE COURT: -- in a direct wire, and I see the name
01:31 18 of Mrs. Paulette Carpoﬀ in the middle it, a name that by
01:31 19 everything I know about shouldn't be there.

01:31 20 MS. SHOUN: Right.

01:31 21 THE COURT: That's all we know right now, and that
01:31 22 doesn't suggest to me any responsibility by any of these
01:31 23 recipients.

01:31 24 MS. SHOUN: Yes, sir.

01:31 25 THE COURT: I mean, that's just -- to me it's just a

01:31 1 whole 'nother question.

01:31 2 MS. SHOUN: And it may be a question that Your Honor
01:31 3 or that Judge Beesley addresses later.

01:31 4 THE COURT: Somebody -- Judge Beesley and I are going
01:31 5 to have to figure out the entitlement of these recipients.

01:31 6 MS. SHOUN: Yes, sir.

01:31 7 THE COURT: But the first question is is this a DC
01:31 8 solar asset?

01:31 9 Okay. Anything further?

01:31 10 MS. SHOUN: Nothing from the plaintiffs, Your Honor.

01:31 11 THE COURT: From the defense?

01:31 12 MR. OVERSTREET: No, Your Honor. Thank you.

01:31 13 THE COURT: Very good.

01:31 14 MS. SHOUN: But thank you, Your Honor. You spent a
01:31 15 lot of time with us, and we appreciate the Court's analysis.

01:31 16 THE COURT: Glad to do it. We're going to figure it
01:31 17 all out before it's over and try to do a little justice. This
01:32 18 hearing is adjourned.

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* * * * *

CERTIFICATE

I, Tana J. Hess, CCR, FCRR, Official Court Reporter
for the United States District Court, District of South
Carolina, certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of proceedings in the above-entitled matter.

Tana J. Hess, CRR, FCRR, RMR
Official Court Reporter

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 CHARLESTON DIVISION

UNITED STATES OF AMERICA)	Case No.: 2:23-cr-00833-RMG
)	
v.)	AFFIDAVIT OF PETER STRAUSS
)	
PETER STRAUSS)	
_____)	

PERSONALLY APPEARED BEFORE ME, Peter J. Strauss, who first being duly sworn,
 says:

1. I am over eighteen (18) years of age and of sound mind, and I am competent to testify to the matters set forth herein.
2. I am the defendant in the action captioned *United States v. Peter Strauss*, 9:23-cr-833-RMG, currently under seal.
3. I am providing this affidavit in support of my motion for the recusal of the Hon. Richard M. Gergel.
4. I believe in good faith that Judge Gergel has a personal bias against me and in favor of the U.S. Attorney's Office, and that Judge Gergel's impartiality might reasonably be questioned.
5. Judge Gergel presided over the prior civil case involving Paulette Carpoﬀ's \$5 million wire to the Strauss Law Firm's trust account, *Solar Eclipse Investment Fund XXXV, LLC and East West Bank v. \$5,000,000 U.S. Dollars Deposited to IOLTA Account of the Strauss Law Firm, LLC in rem, and the Strauss Law Firm, LLC, in personam*, Civil Action No. 9:19-cv-01176-RMG (D.S.C.) (the "Fund 35-EWB Case").
6. Although my pending criminal case does not involve the \$5 million transfer that was the subject of the Fund-35 EWB Case, many of the facts at issue in the Fund 35-EWB case overlap with the facts at issue in my pending criminal case.

7. Judge Gergel's comments and actions while presiding over the Fund 35-EWB Case have led me to believe that he was independently investigating the facts and was relying on his independent investigation rather than evidence presented to the Court, that he had predetermined that I was involved in criminal conduct related to the Carpoiffs and DC Solar, and that he has a personal bias against me and in favor of the U.S. Attorney's Office.

8. At the first hearing in the Fund 35-EWB Case on May 6, 2019 – less than two weeks after the civil complaint was filed – Judge Gergel characterized the transfer as “likely an illegal transfer[,]” and commented that the recipients' right to those funds was “looking pretty dubious[,]” and that “[t]hese transactions appear to be unlawful.”

9. Judge Gergel commented at the hearing that SEC investigators and FBI agents were attending every hearing in the DC Solar bankruptcy action, and stated that “my head of my U.S. Attorneys Office is sitting in the back row here right now, and there's a lot of Government interest in all of this.”

10. At the same May 6, 2019 hearing where Judge Gergel characterized the transfer as “likely an illegal transfer” and pointed out that federal law enforcement agents were interested in all of this and were in attendance at the hearing, Judge Gergel ordered me to appear in his courtroom less than three days later to testify about the “app[arently] unlawful” transactions.

11. Although there was no indication that I would not appear on May 9, 2019 as directed, Judge Gergel threatened to have the U.S. Marshalls “escort” me to the hearing, which I understood to mean he would have me arrested.

12. In light of the comments and actions of Judge Gergel at the May 6, 2019 hearing, I immediately engaged criminal defense counsel. My criminal defense counsel was not able to attend the May 9, 2019 hearing on such short notice.

13. Prior to the May 9, 2019 hearing, my civil counsel in the Fund 35-EWB Case advised Judge Gergel and counsel for Fund 35-EWB that I would be asserting my Fifth Amendment right to not answer questions about the transactions Judge Gergel had characterized as “likely illegal.”

14. On May 9, 2019, I appeared in Judge Gergel’s courtroom and was questioned under oath by Judge Gergel and counsel for Fund 35-EWB. I answered as many questions as I could that did not involve the subject transactions. When Judge Gergel began questioning me about the subject transactions, I responded that I was asserting my Fifth Amendment right to not answer questions about the subject transactions on advice of counsel. Judge Gergel insisted that I state on the record that I was asserting my Fifth Amendment right because my answer may tend to incriminate me.

15. I have no training or experience in criminal law, and when I was unsure about whether to assert my Fifth Amendment right in response to some of the questions, I looked to my civil attorney for direction. Judge Gergel directed my civil attorney to stop communicating with me about whether to assert my Fifth Amendment right.

16. After I finished testifying on May 9, 2019, Judge Gergel stated that he intended to advise the South Carolina Supreme Court that I invoked the Fifth Amendment and suggested that I self-report the same. I did not believe and still do not believe that a lawyer can or should be subject to discipline for invoking the Fifth Amendment.

17. Judge Gergel subsequently made a comment at the May 9, 2019 hearing comparing me to Paulette Carpoﬀ because I asserted my Fifth Amendment right.

18. At the end of the May 9, 2019 hearing, Judge Gergel commented that “[t]o the extent [Fund 35-EWB’s] hypothesis is correct, anybody involved in this transaction potentially has criminal implications tied to them.”

19. While presiding over the Fund 35-EWB Case, both before and during the May 6, 2019 and May 9, 2019 hearings, Judge Gergel made several references to information that had not been presented to the Court. I believe Judge Gergel independently investigated the facts at issue, relied on the results of his investigation, and in some instances, used the results of his investigation to support inferences favorable to the Government’s position in my pending criminal case.

20. Before I appeared through counsel in the Fund 35-EWB Case, Judge Gergel visited the Strauss Law Firm’s website and reviewed information about the firm’s employees and practice areas, which he quoted in the April 30, 2019 order entered in the Fund 35-EWB Case.

21. At the May 6, 2019 and May 9, 2019 hearings, Judge Gergel made several more references to information that had not been presented to the Court in the Fund 35-EWB Case.

22. At both hearings, Judge Gergel referred to unspecified press reports about the search and seizure warrants executed on December 18, 2018. Judge Gergel described the press reports in a light favorable to the Government’s narrative, which he used to infer that I and everyone involved in the transactions had to have immediately known that the funds were illicit. These include comments and references to press reports that “dozens of FBI agents [were] circling the Carpoffs home”; that on the day the warrants were executed, “DC Solar was defunct at that point, literally defunct. The lights were off, the staff was laid off, and all of its accounts were seized by the Federal Government”; that “all accounts of DC Solar had been seized . . . that the Carpoffs’ personal accounts had been seized and all the corporations had been seized”; and that “it was in all the newspapers out there.”

23. Judge Gergel did not identify the source of the press reports he referenced at the hearings or provide any indication whether the reports were published around the time of December 18, 2018 raid or later when details about the Carpoffs' massive fraud became public.

24. Judge Gergel did not reference any press reports that did not support the Government's narrative. For example, the Martinez (California) Gazette, where the Carpoffs and DC Solar were based, published an article on December 20, 2018 that quoted a statement from the Carpoffs' lawyer at Skadden Arps describing the December 18, 2018 raid as related to an ongoing tax dispute and indicating the Carpoffs planned to "continue to grow their business." The newspaper published several more reports through mid-February, 2019 that related the raid to an ongoing tax dispute and indicated DC Solar was "continu[ing] to receive strong support from its employees, customers, its partner and its investors."

25. Judge Gergel stated at the May 6, 2019 hearing that he had spoken with the Nevada bankruptcy judge presiding over the D.C. Solar bankruptcy action about Fund 35-EWB Case.

26. At the May 9, 2019 hearing, Judge Gergel again stated that he had been in touch with the Nevada bankruptcy judge and that they were "working in concert with each other on this."

27. Judge Gergel also referenced and relied upon select information about the bankruptcy that was not provided to the Court in the Fund-35 EWB Case. He stated that the \$5,000,000.00 transfer in question would have surely made Fund 35 one of the largest creditors in the bankruptcy, but noted that it was not listed as one of the top 20 creditors.

28. At the same time, Judge Gergel seemed to have disregarded other information about the bankruptcy that was not favorable to the Government's narrative. For example, Judge Gergel commented several times that the DC Solar entities were shut down or "defunct" as of December 18, 2018, despite that the DC Solar entities initially filed to reorganize under Chapter 11 in

February 2019 and engaged a nationally recognized professional restructuring advisor to lead the reorganization.

29. I believe in good faith that Judge Gergel predetermined in the Fund 35-EWB Case that I had engaged in criminal conduct and that his independent investigation in the Fund 35-EWB Case was focused on identifying information favorable to the Government's narrative to the exclusion of information that was neutral or favorable to my defense.

30. In further support of my motion for the recusal of Judge Gergel, I have reviewed the opinion of Barbara M. Seymour dated November 29, 2023 and incorporate the same into this affidavit.

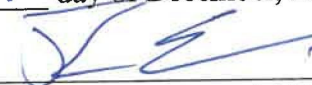
31. The facts set forth in Ms. Seymour's opinion are true and accurate to the best of my knowledge.

32. Based upon the facts set forth in Ms. Seymour's opinion and for the reasons set forth therein, I believe in good faith that Judge Gergel has a personal bias against me and in favor of the U.S. Attorney's Office, and that Judge Gergel's impartiality might reasonably be questioned.

THE AFFIANT FURTHER SAYETH NOT.


Peter J. Strauss

Sworn to and subscribed to before me
This 4 day of December, 2023.


Robert Eaton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 07/27/2027

CERTIFICATE OF COUNSEL

I, Joseph P. Griffith, Jr., am counsel of record for Peter Strauss in the matter captioned *United States v. Peter Strauss*, 9:23-cr-833-RMG. I certify that the Affidavit of Peter Strauss dated December 4, 2023 and the motion it supports are made in good faith.

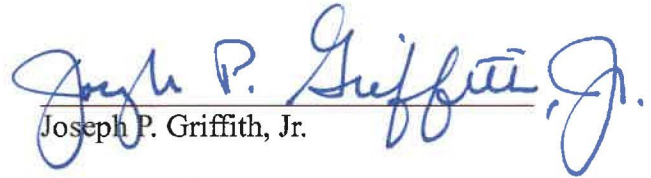

Joseph P. Griffith, Jr.

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,)	Criminal Action No.: 9:23-cr-833-RMG
)	
)	
v.)	
)	
Peter J. Strauss,)	
)	
<u>Defendant.</u>)	

The Affiant, Barbara M. Seymour, an attorney licensed and in good standing in South Carolina and Georgia, being duly sworn, states as follows:

1. I have been retained as an expert witness by counsel for Peter Strauss and have been asked to offer my expert opinions as to whether Judge Gergel should be recused or disqualified from presiding over the criminal matter against Mr. Strauss.
2. I make this affidavit in reliance on the documents and information provided to me regarding relevant facts from this case and a prior civil case based on my qualifications and professional experience and my knowledge and understanding of the legal and ethical principles stated herein.
3. I have the requisite professional knowledge and experience and I am qualified to offer expert opinions in the field of legal and judicial ethics, including the standard of conduct and professional obligations of judges in circumstances potentially warranting recusal or disqualification such as those presented in this affidavit. My qualifications include the following, which are set out more fully in my attached curriculum vitae.
 - a. I earned a Juris Doctor degree from the University of Georgia School of Law in 1993.
 - b. I am an attorney licensed to practice law in South Carolina and Georgia and have been in good standing in those jurisdictions since 1993.

- c. From 1993 to 2000, I worked as a trial lawyer in a plaintiff's practice that represented clients in personal injury, products liability, and workers' compensation matters.
 - d. From 2000 to 2017, I worked as an investigating and prosecuting attorney for the Office of Disciplinary Counsel to the Supreme Court of South Carolina, including service as the Deputy Disciplinary Counsel from 2007 until 2017. The matters I handled for the Office of Disciplinary Counsel involved the capacity and professional conduct of lawyers and judges.
 - e. Since 2017, I have been in private practice, focusing exclusively on matters involving legal malpractice, ethical compliance, lawyer and judicial discipline, discovery disputes, Bar admissions, government ethics, and the unauthorized practice of law. My practice includes providing expert witness opinions and testimony on issues involving the standard of care for lawyers and the ethical obligations of judges, including matters of disqualification and recusal.
 - f. I have extensively read and studied articles, treatises, and other publications on ethics of lawyers and judges. I have written articles, manuals, and other publications on a variety of topics related to the duties and practices of judges, lawyers, and paralegals. I have presented more than 350 continuing legal education programs and guest lectures at local, state, and national meetings and conferences on a variety of ethics-related topics.
 - g. As lead counsel, I have had approximately 130 opinions published by the Supreme Court of South Carolina. All of those cases involved the professional conduct and capacity of lawyers or judges.
- 4. All of the opinions expressed herein are opinions I hold to a reasonable degree of professional and legal certainty; they are more probable than not.
 - 5. In formulating my opinions and preparing this affidavit, I have reviewed and relied upon the following documents:

Exhibit A: Transcript of the May 6, 2019 hearing (TR1), attached.

Exhibit B: Transcript of the May 9, 2019 hearing (TR2), attached.

6. In formulating my opinions and preparing this affidavit, I have been provided with and relied upon the factual information summarized as follows, which I am assuming to be accurate and complete for purposes of this affidavit:

There was a civil dispute in federal court related to a series of bank account transfers, including deposits and disbursements from one or more client trust accounts of Mr. Strauss. That case was Solar Eclipse Investment Fund XXXV, LLC and East West Bank vs. \$5,000,000.00 U.S. Dollars Deposited to IOLTA Account of The Strauss Law Firm, LLC, *in rem*, and The Strauss Law Firm, LLC, *in personam*, Civil Action No. 9:19-cv-1176. On May 6, 2019, United States District Judge Gergel presided over a hearing on a pending Motion for Temporary Restraining Order and Preliminary Injunction.

At that hearing, the judge stated:

[I]t appears that the \$5 million transfer to the Strauss Law Firm is likely an illegal transfer, and those recipients [to whom the funds were disbursed] are in receipt of funds that should not have gone to them from this fund. ... it was certainly done in a way that appears surreptitious to me. TR1 pg.10, lines 17 - 23.

These transactions appear to be unlawful. They would not be protected by privilege, and he appears -- it's not quite clear what capacity Mr. Strauss actually received these funds since he's taking some of the funds himself and putting them in accounts he controls. TR1 pg.13, line 22 - pg.14, line 1.

The judge also stated that he had "been in communication with the Bankruptcy Court," and spoken to the bankruptcy judge about his hearings involving the companies involved. He shared some information he learned about those hearings and the bankruptcy filings. He indicated that the \$5,000,000.00 transfer in question

in the civil case was not listed in the bankruptcy filings and that he promised the bankruptcy judge he would do what he could “to repatriate these funds.” TR1, pp. 11-12.

I think it's looking pretty dubious that they have a right to those funds, and particularly under the circumstances where Skadden Arps [law firm] apparently particularly is involved and these other criminal defense firms are fully aware of the circumstances here, that there has been -- I mean, the press accounts, there were dozens of FBI agents circling the Carpoiffs' [Mr. Strauss's clients'] home. Judge Beasley tells me that every hearing he has, he has SEC investigators and FBI agents sitting in the audience, and I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row here right now, and there's a lot of Government interest in all of this. TR1 pg.12, lines 10 – 20.

Because the attorneys at the hearing were unable to answer all of the judge's questions about the transactions, he stated, “I'[m] going to order Mr. Strauss into the Court here, and I'm going to order him to produce all the documents related to the instructions he received for these transfers.” TR1 pg.11, lines 4 - 7. Although there was no indication at the hearing that Mr. Strauss might not comply with those orders, the judge also issued a warning regarding that appearance to Mr. Strauss through his law firm's counsel, stating, “Let him know that if he seems to have any difficulty getting here, I'm glad to have him escorted by the marshals.” TR1 pg.13, lines 8 - 10.

On May 9, 2019, the judge held a second hearing. Mr. Strauss appeared with counsel and testified under oath. In response to almost every question posed to him by the judge and by the parties' attorneys, Mr. Strauss exercised his Fifth Amendment right and refused to answer. After Mr. Strauss's testimony concluded, the judge stated, “Mr. Strauss, I'm going to put you on notice that I intend to advise the South Carolina Supreme Court that you took the Fifth Amendment today in a matter involving potential criminal activity, and I would suggest you self-report your appearance here today and your actions.” TR2 pg.33, lines 8 - 12.

At this time, Mr. Strauss has executed a plea agreement and pleaded guilty in a related criminal investigation involving a transaction different from the \$5 million in question in the Solar Eclipse Investment Fund XXXV, LLC case, but involving the same clients. Based on the judge's statements and actions in the civil case, Mr. Strauss is concerned and believes that the judge has a personal prejudice against him, has a personal bias in favor of the U.S. Attorney's Office, and/or has demonstrated the appearance of partiality against him.

7. The documents and information I have reviewed and relied upon in formulating my opinions are of the type commonly and typically relied upon by experts in this field.
8. It is my expert opinion, held to a reasonable degree of professional and legal certainty, that the judge should recuse himself from the criminal matter against Mr. Strauss to avoid the appearance of impropriety.¹ Specifically, my opinions are as follows:
 - a. A federal judge should recuse himself from a sentencing hearing in a criminal case when there is a reasonable appearance of personal bias, even if the judge believes he can be impartial. This is a fundamental principle of judicial ethics and fairness and it helps ensure that the criminal justice system maintains public trust and confidence. There are several reasons why recusal in such situations is essential:

Judicial Code of Conduct: Federal judges are bound by a Code of Conduct, which outlines their ethical obligations. One of the key principles in this code is that judges must avoid both actual bias and the appearance of bias. This means that judges should not only be impartial but also avoid situations where their impartiality might reasonably be questioned.

Preservation of Judicial Impartiality: The cornerstone of a fair and just legal system is the impartiality of judges. Judges must be seen as unbiased and

¹ I offer no opinion on whether the judge has engaged in judicial impropriety.

neutral arbiters who apply the law objectively. This perception of impartiality is crucial to maintain public confidence in the judiciary.

Public Perception: Even if a judge genuinely believes he can be impartial, the perception of bias can undermine the public's trust in the judicial system. If the public believes a judge is personally biased or has a potential conflict of interest, it can erode confidence in the fairness of the proceedings.

Equal Protection Under the Law: The principle of equal protection under the law requires that all individuals receive the same treatment and consideration in court, regardless of their background, status, or the nature of the case. Any hint of bias, even if unintentional, can raise doubts about whether this principle is being upheld.

Fair Trial Rights: In criminal cases, the defendant has a constitutional right to a fair trial. This includes the right to be judged by an impartial tribunal. If a judge's impartiality is in question due to an appearance of bias, it can infringe upon the defendant's constitutionally protected fair trial rights.

Avoiding Litigation and Appeals: When a judge's impartiality is questioned and not addressed through recusal, it can lead to prolonged litigation and appeals. This is costly, time-consuming, and may not ultimately result in a just outcome. Recusal can help prevent such complications.

Maintaining the Integrity of the Judiciary: The integrity of the judicial system relies on judges who adhere to the highest ethical standards. Recusal in cases where impartiality might reasonably be questioned is a proactive step to maintain the reputation and credibility of the judiciary.

- b. With regard to Mr. Strauss, the judge has made statements that would cause an objectively reasonable person to question his impartiality. Before being charged with any crime, Mr. Strauss was compelled to appear before

the judge and answer questions related to civil claims to funds processed through his client trust account. This inquiry implicated both Mr. Strauss's obligations to protect his clients' confidentiality and privilege and his own interest in avoiding potential self-incrimination. At the May 6, 2019 hearing, the judge had ruled (without hearing argument or briefing) that the information related to the transaction was "not protected, attorney-client privilege" based on his conclusion that the "transactions appear[ed] to be unlawful." TR1 pg.13, lines 20 - 22.

c. Mr. Strauss correctly and rightfully asserted Constitutional protections in response to many of the questions posed to him at the hearing. The judge expressed an opinion that a lawyer's assertion of the Fifth Amendment was unethical and required reporting to the disciplinary authorities when he stated that he would be reporting Mr. Strauss and when he suggested Mr. Strauss report himself. The judge took this position even though he acknowledged the potential criminal implications of the civil proceedings. The judge stated, "[L]et's be candid. To the extent [the plaintiff's counsel's] hypothesis is correct, anybody involved in the transaction potentially has criminal implications tied to them ... [i]f they're actually involved in converting the funds[.]" TR2 pg.68, lines 21 - 24.

d. In fact, it is not professional misconduct for a lawyer to assert Fifth Amendment rights. Every American has that right and lawyers are no exception. The Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him or her not to answer official questions put to him or her in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." Lefkowitz v. Turley, 414 U.S. 70, 77 (1973). It follows that a lawyer is not subject to disciplinary sanction for invoking the Fifth Amendment privilege against self-incrimination. In Spevack v. Klein, the U.S. Supreme Court held that "the Self-Incrimination Clause of the Fifth

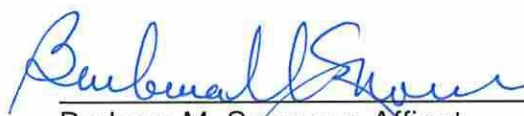
Amendment ... extends its protection to lawyers as well as to other individuals, and [] it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." 385 U.S. 511, 514 (1967). The Supreme Court stated that lawyers are "not excepted" from Fifth Amendment protections because the "threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege." The Supreme Court held that an attorney who invokes the Fifth Amendment can suffer "no penalty," which would include "the imposition of any sanction which makes the assertion of the Fifth Amendment privilege costly."

- e. Given that the law is clear that invoking the privilege against self-incrimination is not professional misconduct, the judge's reaction and response to Mr. Strauss's refusal to answer certain questions related to his clients' financial transactions would cause a reasonable defendant concern regarding the judge's ability to decide his fate in a fair and impartial manner.
- f. It would also be reasonable for Mr. Strauss to be concerned about judicial impartiality based on the judge's comments at both hearings suggesting he might have participated in or assisted his clients in criminal activity related to the \$5 million trust account deposit. The impending criminal charges against Mr. Strauss are not based on transactions associated with that deposit; however, Mr. Strauss should reasonably expect his fate to be determined by a judge who did not have preconceived notions about his integrity as an attorney. The perception of personal bias in this matter is heightened due to the judge's expressed affinity or affiliation with the federal prosecutor. In the first hearing, he noted, "I don't mind to say that my head of my U.S. Attorney's Office is sitting in the back row here right now, and there's a lot of Government interest in all of this." TR1 pg.12, lines 10 – 20 (*emphasis added*).

- g. It would also be reasonable for Mr. Strauss to be concerned about judicial impartiality based on the judge's apparent independent investigation about the bankruptcy proceedings involving the Carpoiffs' companies. Canon 3A(4) of the Code of Judicial Conduct for U.S. Judges (effective March 12, 2019) states that "a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers." This restriction includes "communications from lawyers, law teachers, and others who are not participants in the proceeding." (See, Commentary to Canon 3A(4).) The judge's statements regarding his communications with the bankruptcy judge and his pledge to use the civil case to assist in marshalling assets for the debtors' creditors would cause a reasonable person to question his impartiality.
- h. Canon 3C(1) of the Code of Judicial Conduct for U.S. Judges states that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned[.]" The Canon goes on to provide some examples of circumstances where such may occur, including "personal bias or prejudice concerning a party[.]" However, the issue of judicial recusal involves more than actual bias and can be required where a judge's "impartiality might reasonably be questioned." This is based on an objective standard whether "a reasonable well informed observer" outside the judiciary "might reasonably question [the judge's] impartiality on the basis of all of the circumstances." The purpose of this judicial disqualification standard is to preserve public confidence in the integrity and impartiality of the federal judiciary by requiring recusal where there might be a public perception of a lack of impartiality or fairness by a judge sitting in a particular matter. The question of recusal is broader than the issue of personal bias, extending to the potential appearance of partiality and public confidence in the integrity and fairness of the judicial process. The Court's duty to avoid even an appearance of impartiality must ultimately be decided on an objective standard designed to preserve public confidence in our

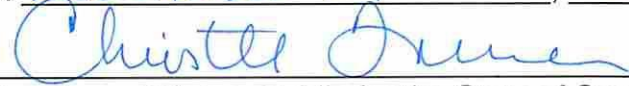
system of justice. This provision provides an objective standard and does not require a showing of actual bias.

- i. In this case, the judge's threat to file a disciplinary complaint against Mr. Strauss for asserting his Fifth Amendment rights, in direct contravention of established law; his stated opinions in the civil case that the transactions appeared "dubious," "surreptitious," "illegal," and "unlawful;" his language suggesting he is in alliance with the U.S. Attorney; and, the apparent influence of extra-judicial information combine to raise a reasonable question about his impartiality.
9. My expert opinions are based on the evidence provided to me at this time, as outlined above, all of which I have assumed to be true. The opinions in this affidavit are subject to supplementation, clarification, and modification if and when further evidence or issues are presented to me.


Barbara M. Seymour, Affiant

Columbia, SC
November 29, 2023

SWORN TO AND SIGNED in my presence
on November 29, 2023.


Signature of Notary Public for the State of South Carolina

Christle Turner

Printed Name

My commission expires: 2/24/25

BARBARA M. SEYMOUR, J.D.

EDUCATION

UNIVERSITY OF GEORGIA, SCHOOL OF LAW, Juris Doctor, May 1993

UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, B.S., Management & Marketing, May 1990

PROFESSIONAL EXPERIENCE

CLAWSON & STAUBES, LLC, COLUMBIA, SOUTH CAROLINA, July 2017 – Present

Partner. Representing clients in Professional Responsibility, Legal Ethics, State Ethics Act, and unauthorized practice of law matters. Assisting lawyers and law firms in ensuring ethical compliance, including conflicts analysis, advertising review, risk management assessment, trust account management training, succession planning, departure and dissolution guidance, and litigation and discovery conduct. Representing lawyers, judges, and law students in Bar admission, reinstatement, and professional discipline matters. Legal malpractice consulting and testimony.

PARALEGAL DEGREE PROGRAM, MIDLANDS TECHNICAL COLLEGE , August 2000 – Present

Adjunct Professor. Courses have included Torts, Introduction to Law and Ethics, Civil Litigation, Law Office Management, and Business Law.

OFFICE OF DISCIPLINARY COUNSEL, SUPREME COURT OF SOUTH CAROLINA, June 2000 – July 2017

Deputy Disciplinary Counsel. Investigated complaints of misconduct and incapacity pursuant to the Rules of Professional Conduct, the Code of Judicial Conduct, and the Rules for Disciplinary Enforcement. Prosecuted discipline, incapacity, and contempt proceedings before the Commission on Lawyer Conduct and the Supreme Court of South Carolina. Trained new ODC attorneys and staff. Design, training, and technical support for case management software. Drafted proposed rule revisions. Provided assistance and advice to the Disciplinary Counsel in personnel, case processing, and policy matters.

PROFESSIONAL LEGAL ASSISTANTS PROGRAM, CONVERSE COLLEGE, August 1997 – June 2000

Adjunct Instructor. Taught Professional Responsibility, Legal Research & Writing, and Civil Litigation.

HARRIS & GRAVES, P.A., GREENVILLE, SOUTH CAROLINA, August 1993 – June 2000

Associate. Responsible for all aspects of client files, from initial interview to settlement or trial. Maintained an average caseload of 200 files, representing plaintiffs in civil matters. Extensive courtroom experience. Hired, trained, supervised non-lawyer staff.

REPRESENTATIVE CASES

In the Matter of McKeever, 421 S.C. 130, 805 S.E.2d 201 (2017)

In the Matter of Breckenridge, 416 S.C. 446, 787 S.E.2d 466 (2016)

In the Matter of Berger, 408 S.C. 313, 759 S.E.2d 716 (2014)

In the Matter of Collie, 410 S.C. 556, 765 S.E.2d 835 (2014)

In the Matter of Carter, 400 S.C. 170, 733 S.E.2d 897 (2012)

In the Matter of White, 391 S.C. 581, 707 S.E.2d 411 (2011)

In the Matter of Davis, 395 S.C. 470, 719 S.E.2d 645 (2011)

In the Matter of Pennington, 393 S.C. 300, 713 S.E.2d 261 (2011)

In the Matter of Lattimore, 361 S.C. 126, 604 S.E.2d 369 (2004)

Linder v. Insurance Claims Consultants, 348 S.C. 447, 560 S.E.2d 612 (2002) (*amicus curiae*)

BARBARA M. SEYMOUR, J.D.

PROFESSIONAL AFFILIATIONS

- **South Carolina Bar**, Admitted November 1993
 - Professional Responsibility Committee, 2003 – Present (Chair, 2022 – Present)
 - Unauthorized Practice of Law Committee, 2016 – Present (Chair, 2018 - 2020)
 - Diversity Committee, 2017 – Present
 - Professional Standards Subcommittee Chair, 2020-2022
 - Law Related Education Committee, 1998 – Present (Chair, 2002 – 2004)
 - House of Delegates, 2017 - 2018
 - Legal Ethics and Practice Program (LEAPP), Creator & Presenter, 2009 - 2020
 - S.C. Access to Justice Commission, Limited Scope Representation Subcommittee (2017)
 - Bridge-the-Gap/Essentials Series Faculty
 - Ethics Essentials – Coordinator & Presenter, 2018 – Present
 - Personal Injury Essentials – Ethics Presenter, 2018 – Present
 - Family Law Essentials – Ethics Presenter, 2022 - Present
 - Trust Accounting, 2013 – 2014
 - Law Office Management, 2005 – 2006
 - Continuing Legal Education Committee, 2000 – 2006
 - Conventions Committee, 2000 – 2003
 - Young Lawyers Division, 1993 – 2003
 - Adopt-A-Shelter Committee, 1999 – 2000
 - Continuing Legal Education Committee, 2001 – 2002
- **State Bar of Georgia**, Admitted July 1993
 - Facilitator, First-Year Law Student Orientation on Professionalism 1997, 1999, 2000
- **SC Paralegal Certification Board**, Character and Fitness Subcommittee 2020 - Present
- **Association of Professional Responsibility Lawyers**, 2017 – Present
- **South Carolina Women Lawyers Association**, 1998 – Present
 - Judicial Election Task Force, Chair, 2018 – 2020
 - Board of Directors, 2002 – 2005
 - Membership Committee Chair, 2004 – 2005
 - Editorial Committee Chair, 2002 – 2003
 - Midlands Region Coordinator, 2002
- **National Organization of Bar Counsel**, 2000 – 2017
 - Director-at-Large, 2016 - 2017
 - Liaison to ABA Commission on Lawyer Assistance Programs, 2016 – 2017
 - Programming Committee, 2011 – 2016
 - Special Committee on Permanent Retirement, 2012
 - MRLDE Subcommittee, 2011
- National Institute for the Teaching of Ethics and Professionalism - Fellow, 2006 & 2011
- Midlands Technical College Paralegal Studies Dept. Adjunct Faculty Member of the Year, 2020
- SC Bar Law-Related Education Lawyer of the Year, 2006
- Martindale-Hubbell rating – AV Preeminent
- *South Carolina Lawyer's Weekly* Leadership in Law Award, 2013
- Richland County Bar Association, 2018 - Present
- South Carolina Trial Lawyers Association, 1993 - 2000
- Spartanburg & Greenville County Bar Associations, 1993 – 2000
- American Bar Association, 1993 – 2000, 2023 - Present

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BARBARA M. SEYMOUR, J.D.

PUBLICATIONS

Protecting the Profession and the Public: Primer on Reporting Misconduct *SC Lawyer Magazine* ([Jan 2023](#))
Navigating the SC Disciplinary Process, *SC Lawyer Magazine* (November 2022)
Trust Accounting for South Carolina Lawyers: An Annotated Practice Manual, SC Bar Publication (2021)
Paralegal Survival Guide, Ethics & Professional Responsibility Chapter, SC Bar Publication (4d Ed. 2020)
New Year's Resolution: Escheat Unclaimed Funds! *SC Lawyer Magazine* (January 2018)
The Curious Case of Benjamin Hunt: Origins of Civility Regulation in SC, *SC Lawyer Magazine* (May 2013)
Ethics Watch: An Inside Look at Confidential Discipline, *SC Lawyer Magazine* (May 2008)

NATIONAL CONFERENCE PRESENTATIONS

Passing the Baton: Leaving Your Practice in Good Hands, (panelist), American Bar Association 48th Annual Professional Responsibility Conference – New Orleans, LA (2023)
Uncharted Waters: Navigating a Multijurisdictional Practice, American Public Power Association Annual Legal and Regulatory Conference – Charleston, SC (2018)
The Crucible of Discipline: The Role of Public Shaming in Promoting Professional Conduct and Protecting the Public, National Organization of Bar Counsel Annual Meeting – New York, NY (2017)
Just Because You're Paranoid Doesn't Mean They're Not After You: Managing Complaints Against Bar Counsel, (panelist) NOBC Annual Meeting – New York, NY (2017)
New Challenges in Managing Receiverships, (moderator) NOBC Mid-Year Meeting - Miami, FL (2017)
Attorney Discipline Procedures from Around the Globe: Comparative Analyses and Best Practices, (panelist) 5th International Conference of Legal Regulators - Washington, DC (2016)
The Bigger They Are, the Harder They Fall: Challenges in Prosecuting Government Officials, (moderator) NOBC Annual Meeting – San Francisco, CA (2016)
Ethics & the Elderly Client: Investigating Disciplinary Complaints Related to Representation of Older Clients, (panelist) NOBC Mid-Year Meeting – San Diego, CA (2016)
Nontraditional Legal Service Providers and the Impact of NC Board of Dental Examiners v. FTC on Lawyer Regulation, (moderator) NOBC Annual Meeting – Chicago, IL (2015)
Professionalism Mandates & Regulation of Lawyer Civility, NOBC Annual Meeting – Chicago, IL (2015)
Ten Years of Multijurisdictional Practice: The Challenge of Regulating Cross-Border Practice, NOBC Annual Meeting – Chicago, IL (2015)
It's Just Adding and Subtracting: Helping Lawyers Avoid Trust Accounting Disasters and Prosecuting Them When They Don't, NOBC Mid-Year Meeting – Houston, TX (2015)
Is Where You Sit Where You Practice? MJP, UPL, and the Virtual Practice of Law (panelist), 12th Annual Legal Malpractice & Risk Management Conference - Chicago, IL (2013)
Prosecutorial Discretion: Disciplinary Complaints Against Public Defenders, (panelist) NOBC Mid-Year Meeting – Dallas, TX (2013)
This is Not Your Father's Law Firm: Investigating "National" Law Firms & Virtual Law Offices, NOBC Annual Meeting – Chicago, IL (2012)
A LEAPP Forward: South Carolina's Ounce-of-Prevention Approach to Lawyer Discipline, Burge Conference on Law and Ethics, Georgia State University College of Law – Atlanta, GA (2011)
Mandatory Overdraft Reporting: South Carolina's Holistic Approach to Trust Account Compliance, NOBC Mid-Year Meeting – Atlanta, GA (2011)
Judicial Ethics & Electronic Communication, National College of Probate Judges Fall Conference – Charleston, SC (2010)
Finding Your Way: Ethics for the Transportation Lawyer, (panelist) American and Canadian Transportation Lawyers Associations Annual Joint Conference – Hilton Head Island, SC (2010)
Ethics 2.0: Is New Media Really Changing Legal Ethics? NOBC Annual Meeting – San Francisco, CA (2010)



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LOCAL & STATE PRESENTATIONS

Back to Basics: Trust Accounting 101, Stewart Title Company, Title Insurance Professionals Seminar (2023); SC Workers' Compensation Education Association, Annual Conference (2017); Hilton Head Bar; SC Supreme Court Mentees (2011); Spartanburg Co. Bar; Lexington Co. Bar (2010); Richland Co. Bar

Ten Things You Need to Know About Conflicts of Interest, SCWCEA Annual Conf. (2023)

Deepfake Technology and Artificial Intelligence: What Litigators Need to Know, SC Public Defenders Association Annual Meeting; SC Injured Workers Advocates Annual Conference (2023)

10 Things You Need to Know that You Won't Find in RPC, Haynsworth-Perry Inn of Court (2023)

Creating a Culture of Ethics in Public Service, SC Association of Probate Judges Bench/Staff Seminar (2023)

Ethics Update for Judges, SC Association of Probate Judges Annual Meeting (2023)

Where Angels Fear to Tread: Unauthorized Practice of Law, Palmetto Paralegal Assn. (2003); SC Association for Justice Paralegal Seminar (2023)

Ethics & Deepfake Scams: What You Need to Know to Protect Your Clients and Your Firm, Chicago Title Ins. Co. Annual Claims & Underwriting Seminar, Lexington County Bar Annual CLE (2022); SC Women Lawyers Association CLE (2023)

Recognizing & Addressing Cognitive Impairment in Your Law Office, Charleston County Bar Wellness Committee CLE (2020); SCWLA (2023)

Unique Ethical & Regulatory Challenges for Immigration Lawyers, American Immigration Lawyers Assn (2022)

Ethical Considerations for Court Employees, Aiken County Magistrates' Office (2017); SC Assn of Clerks of Court & Registers of Deeds Fall Conference (2022)

The Paralegal Parachute: Saving Lawyers from Themselves, Palmetto Paralegal Assn. Lunch Meeting (2022)

Ethics Tips for Public Defenders, SC Public Defenders Association Annual Meeting (2022)

Ethics & the Modern Solo Practice, Charleston School of Law Solo Practice CLE (2022)

School Law Ethics: Collaboration in School District Representation, SCSBA Council of School Attorneys (2022)

The Problem of Prejudice in the Legal Profession: Is There a Regulatory Solution? Charleston School of Law Diversity Week Speaker Series (2022)

Behind the Scenes at ODC: How the Discipline Process Works and How to Avoid It, Pee Dee Inn of Court (2022); Richland Co. Bar (2021); Berkeley Co. Bar (2019); Charleston Co. Bar "What Works" (2018)

Trust Accounts: From Set Up to Succession, Chicago Title Ins. Co. Attorney Seminar (2022)

Practical Advice for Taking Responsibility, Building Resilience, and Being a Better Lawyer, Hilton Head Bar Super CLE (2021); Greenville Co. Bar Annual Conference; SCWLA CLE (2020)

Ethics & Social Media for Litigators, SC Defense Trial Attorneys Association Annual Conference (2020)

Ethical Issues and Pro Se Litigants, SC Children's Law Center, DSS Attorney Seminar (2020)

Judicial Ethics in the Virtual World, SC Association of Probate Judges Annual Meeting (2020)

Defending the Borders: MJP, UPL, and Advertising for Immigration Lawyers, SC Chapter of American Immigration Lawyers Association CLE (2020)

A Little Help from Your Friends: SA/MH Resources for SC Lawyers, Hilton Head Island Bar, Annual Super CLE (2020); SC Workers' Compensation Education Association, Annual Conference (2019)

Too Good to Be True? Risks of Associating with "National" Law Firms, SC Bankruptcy Law Association (2019)

Judicial Ethics for Lawyers, SCWLA (2011 & 2019); York County Bar (2011)

Your Name (and Address) Here: How to Avoid Advertising Complaints, Richland County Bar, Greenville Association of Criminal Defense Lawyers (2019); Charleston County Bar (2017)

Keys to Securing Client Confidentiality, Palmetto Paralegal Association Fall Conference (2019)

Ethics & Civil Litigation, SC Association for Justice Annual Conference (2018)

Succession Planning for Lawyers and Law Firms, SC Bankruptcy Law Association (2018)

Those Were NOT the Days: A History of Discrimination in the Legal Profession, SCWLA; SC Bar YLD Diversity Committee CLE; SC Bar Leadership Academy (2017)

Multijurisdictional Practice and Unauthorized Practice of Law in Magistrate's Court, SC Summary Court Judges



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Association Annual Meeting (2017)
Back to Basics: Trust Accounting 101, SCWCEA Annual Conf. (2017); Hilton Head Bar; SC Supreme Court Mentees (2011); Spartanburg Co. Bar; Lexington Co. Bar (2010); Richland Co. Bar; SCWCEA (2005)
Judicial Ethics in the Internet Age, Summary Court Judges Annual Meeting (2017); South Carolina Judicial Conference; SC Assn. of Probate Judges, Bench/Staff Seminar (2010)
Warning Signs that Your Lawyer Might Be in Trouble, Palmetto Paralegal Assn. (2006 & 2017)
Ethics & Professionalism for Law Clerks & Staff Attorneys, SC Judicial Conference (2007-2017)
"No Comment!" Ethical Considerations in Lawyer-Media Relations, SCWLA; Hilton Head Bar (2016)
Unauthorized Practice, False Witnessing, and Misappropriation: Is It Time to Reconsider Certification & Regulation of Paralegals in South Carolina? SC Legal Staff Professionals; (2015) Upstate Paralegal Assn. (2016); Palmetto Paralegal Assn. (2014)
Ethical Considerations in the Use of Social Media by Lawyers and Law Firms, SC Defense Trial Attorneys Assn. Annual Meeting; Lexington County Bar Annual CLE (2015)
Ethics and Discipline Update for Real Estate Practitioners, SC Bar Real Estate Section, Annual Convention (2016); First American Title Company, Annual Attorney Seminar (2015)
Law Office Management, Technology, & Ethics, SCWLA (2015); SC Legal Staff Professionals CLE (2013); Greenville County Bar CLE; Palmetto Paralegal Assn. (2012)
Defending the Borders in the Internet Age: Multijurisdictional Practice, Virtual Law Offices, and the Unauthorized Practice of Law, SCWLA; Hilton Head Bar; SC Judicial Conference; Chicago Title Ins. Co. Attorney Seminar (2014); Richland Co. Bar Annual Ethics Seminar; SCAJ Annual Convention (2013)
Lawyers and Identity Theft: An Emerging Trend, SCWLA; Hilton Head Bar Assn.; SCAJ Annual Convention (2013); SCWCEA Annual Education Conference (2012)
Advertising Evolution: Recent Developments in the Regulation of Law Office Marketing, SCWCEA Annual Education Conference; SCWLA; Association of Legal Marketing Professionals, Low Country Chapter; SC Injured Workers Advocates (2013)
Thinking About the Unthinkable: Planning for Disaster, Disability, Discipline, and Death, SCAJ, Annual Convention (2009 & 2013)
Social Networking: Professionalism and Ethics for Paralegals, SC Legal Staff Professionals (2011 & 2013); Upstate Paralegal Assn. (2011); Palmetto Paralegal Assn. (2010)
Managing Ethical Issues in Your Day-to-Day Practice, National Business Institute CLE (2006, 2007, 2012); SC Supreme Court Mentees CLE (2010)
Substance Abuse & Mental Health Issues in the Legal Profession, Lexington County Bar (2011)
Two Wrongs Don't Make a Right: The Lawyer's Oath, Revisited, SCAJ Annual Convention; SCWCEA Annual Conference (2011)
Legal Ethics in the Digital Age, National Business Institute CLE (2011)
Navigating the Social Media Minefield: Are You Prepared? SC Assn. of Legal Administrators (2011)
Trust Accounting for Real Estate Lawyers, South Carolina Bar Convention (2011); Stewart Title Company, Title Insurance Professionals Seminar (2006)
Pretexting & Dissembling: Lawyers and Little White Lies, SC Insurance Reserve Fund - Law Enforcement Defense Counsel Annual Meeting (2010); cited in Ethics of "Pretexting" in a Cyber World, 41 MCGEORGE L.REV. 2; SCWCEA Annual Conference (2009)
Accounting & Accountants: What Lawyers Need to Know, National Business Institute CLE (2010)
Making the Most of Technology at Trial (panelist), Assn. of Litigation Support Professionals (2010)
Advertising in the Internet Age, SC Assn. of Legal Administrators; Hilton Head Bar; SCWLA (2010)
Social Networking: Professionalism in the Internet Age, SCWLA; Lexington Co. Bar; Federal Law Clerks (2010)
Ethical Considerations in Marketing Your Law Practice, SCWLA; Richland Co. Bar, Annual Seminar (2009)
Eight Simple Ways to Lose Your Law License by Email, Hilton Head Bar; Federal Law Clerks; Richland Bar (2009); SCWLA; SCWCEA Annual Conference (2010)



BARBARA M. SEYMOUR, J.D.

Professional Responsibility and Lawyer Discipline in South Carolina, SCANPO/SCDOR Annual CLE (2003); SC Attorney and CEO Clinic (2000)
Legal Ethics for Private Investigators, SC Assn. of Legal Investigators, Annual Conference (2007)
How to Handle Lawyer Misconduct in Your Courtroom, South Carolina Judicial Conference (2007)
Basics of Legal Assisting in SC: Ethics for Legal Assistants, Half Moon Seminars (2001, 2003, 2007)
The Busy Lawyer's Top Five Must-Haves This Holiday Season, SCAJ Annual Auto Torts Seminar (2007)
Practical Legal Ethics for SC Attorneys and Law Office Staff, Half Moon Seminars (2001, 2004, 2006)
Screening for Conflicts & Obtaining Waivers After Ethics 2000, SCWLA (2006)
Ethics for Federal Practitioners, SC Chapter of the Federal Bar Assn. (2005)
What You Need to Know About Ethics 2000, USC School of Law Alumni Assn., Annual CLE; SCAJ Annual Convention (panelist); SCWLA (2005)
Revised Lawyers' Oath Seminar, SC Claimants' Attorneys for Workers' Compensation; SC Probate Judges Assn. (2005); Hilton Head Bar; SCAJ; SC Administrative & Regulatory Lawyers Assn.; SC Assn. of Criminal Defense Lawyers; SCWLA (2004)
Top Ten Most Frequent Complaints, USC School of Law Alumni Assn., Annual CLE (2003)
The Ethics Café: Overview of Ethical Considerations, Hilton Head Bar CLE (2003)
Think Like a Manager: A Systems Approach to Ethical Compliance, SCWCEA Annual Conf.; SCWLA (2002)
Top 10 Ways Lawyers Screw Up Their Reputations, NMR&S Center on Professionalism CLE (2002)
The Twenty-First Century Paralegal, Converse College PLA Program, Commencement Address (2001)
Ethical Considerations for Legal Support Staff, Spartanburg County Paralegal Association (1999)

SOUTH CAROLINA BAR CLE PRESENTATIONS

Lawyers are (Vulnerable) People, Too: Tips for Succession Planning, Speaker and Moderator, Representing Vulnerable Populations Seminar (2023)
Ethical Considerations When Starting Your Own Law Practice, Beyond Nuts & Bolts Seminar (2023)
Annual Ethics Hot Tips, Speaker and Moderator (2023)
How to Get Paid Without Getting Disbarred, 32nd Annual Criminal Practice in South Carolina (2023)
Fostering an Ethical Organizational Culture: Tips for Leaders, Hot Topics in Education Law (2023)
Ethics and Civility: Beyond the Lawyer's Oath, Family Law Hot Tips (2022)
How to Avoid Grievances and What to Do When You Can't, Annual Tips from the Bench (2015, 2017, 2022)
Ethics & The Modern Law Firm: Lessons from the Pandemic (2022)
Trust Account Academy, Distance Learning Three-Part Series (2021)
Investigation Ethics for Litigators, Distance Learning Video (2020)
Diversity & Inclusion in the Profession: Where We've Been & Where We Are Going, Ann. Convention (2018)
Current Events in Criminal Law & Ethics, 25th Annual Criminal Practice Seminar (2018)
Ethics for Criminal Lawyers: The New Model Rule 8.4(g), 25th Annual Criminal Practice Seminar (2017)
Common Advertising Complaints and How to Avoid Them, Annual Convention (2017)
Ethics and Discipline Update for Real Estate Practitioners, Annual Convention (2016)
A Little This Side of the Snow: The Changing Landscape of the Legal Profession, 31st Annual NC/SC Labor & Employment Law Conference (2015)
Ethics for Criminal Lawyers: Interactions with the Media, 24th Annual Criminal Practice Seminar (2015)
Loan Modification & Unauthorized Practice in Equity Court, Master-in-Equity Bench/Bar (2014)
"I Was Just Obeying Orders": Ethical Consideration for Attorneys & Paralegals, The Secrets of Law Firm Profitability & Efficiency Seminar (2014)
Ethics & Marketing: Getting Out There Without Getting in Trouble, Rainmaking Boot Camp (2014)
Establishing & Maintaining Your Client Trust Account, Distance Learning Video (2012)
Ethical Considerations in Marketing Your Law Practice, Distance Learning Video (2008, rev. 2012)
Ethics on the River: Annual Update on Ethics & Discipline (2011)



BARBARA M. SEYMOUR, J.D.

Ethics of Bankruptcy Practice in South Carolina: Advertising in SC Post-Milavetz (2011)
Practice Essentials for Lawyers and Paralegals: Confidentiality in the Internet Age (2010)
Staying Out of eTrouble: Professional Responsibility & Online Networking, Distance Learning (2010)
Ethics & Online Networking, Conference on the 75th Anniversary of the SC Workers' Comp Act (2010)
Back to Basics: Trust Accounting 101, Solo & Small Firm Conference (2010, 2011, 2012)
Succession Planning for Lawyers, Solo & Small Firm Section, Hot Tips Seminar (2010)
Advertising in the Internet Age, Law of Automobile Insurance Seminar (2009)
Search Engine Marketing and Ethical Considerations for Law Firms (2009)
Ethics & Advertising for Family Law Practitioners, Family Law Section, Hot Tips Seminar (2009)
Judicial Ethics for Lawyers, Master-in-Equity, Probate, and Family Court Bench Bar Seminars (2009)
Ethics Update for Solo & Small Firm Practitioners, Annual Convention (2007)
Developments in Professional Responsibility & Lawyer Discipline, Solo & Small Firm Section (2007)
Ethics – Did You Know...? Distance Learning Video (2007)
Ethics 2000, Tips from the Bench Seminar (2005)
20/20 – An Optimal View of 2005: Annual Review of Disciplinary Cases (2005)
Hot Tips for Domestic Law Practitioners: Juggling Ethics in the Family Circus (2003)
Sex, Lies, and Conflicts of Interest (2003)
Take Your Lawyer 'Oats' Seriously: Words of Wisdom for Attorneys from Their Clients, (2003)
Conflicts of Interest in Domestic Cases, Family Law Ethics Seminar (2003)
SC Tort Claims Act: Beyond the Primer (1998 & 2003)
Controlling Your Environment: Ethics for Nonlawyer Staff, Annual Convention (2002)
Are We Having Fun Yet? Interactive Ethics Presentation (2002)
Ethics Roadshow, Client Assistance Program Seminar (2002)
Small Office Systems and Ethical Compliance, Solo & Small Firm Section Seminar (2002)
Ring Out the Old, Ring in the New: Ethics Update (2001)
Professionalism in the Real World, Young Lawyers Division Seminar (2001)

GUEST LECTURES & IN-HOUSE PRESENTATIONS

AGENCIES:

U.S. District Court for the Southern District of Georgia, Advisory Committee
Office of the United States Attorney, District of South Carolina
SC Commission on Prosecution Coordination
SC Department of Insurance
SC Department of Social Services
SC Appleseed Legal Justice Center
SC Department of Health & Environmental Control
SC Worker's Compensation Commission
SC Department of Labor, Licensing, and Regulation
SC Office of the Attorney General
SC Association of Counties
7th Circuit Solicitor's Office
South Carolina Legal Services
Public Employee Benefits Administration Board of Directors
SC Public Service Commission
SC House of Representatives Staff Attorney's Office



BARBARA M. SEYMOUR, J.D.

LAW FIRMS:

Nelson Mullins Riley & Scarborough
Womble, Carlisle, Sandridge & Rice
Ogletree, Deakins, Nash, Smoak & Stewart
McAngus Goudelock & Curry
Collins & Lacy
Haynesworth Sinkler Boyd
Callison Tighe Robinson
Burnette, Shutt & McDaniel
Turner, Padgett, Graham & Laney, PA

EDUCATIONAL INSTITUTIONS:

University of South Carolina School of Law
Georgia State University College of Law
Charleston School of Law
Greenville Technical College, Paralegal Department
Horry-Georgetown Technical College, Legal Studies Dept.



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

SOLAR ECLIPSE INVESTMENT FUND
XXXV, LLC and EAST WEST BANK

versus

\$5,000,000.00 U.S. DOLLARS
DEPOSITED TO TOLTA ACCOUNT
OF THE STRAUSS LAW FIRM, LLC
IN REM, AND THE STRAUSS LAW
FIRM, LLC, *IN PERSONAM*

Civil Action No. 9:19-cv-1176

May 6, 2019

REPORTER'S OFFICIAL TRANSCRIPT OF THE
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION BEFORE THE
HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
MAY 6, 2019

Appearances:

For the Plaintiffs:

Nexsen Pruet
BY: Cheryl D. Shoun
R. Bruce Wallace
PO Box 486
Charleston, SC 29402
843.577.9440

For Defendant Strauss
Law Firm:

Earhart Overstreet
BY: David Overstreet
Mike McCall
878 Whipple Road
Suite 200
Mt. Pleasant, SC 29464
843.972.9400

Official Court Reporter:

Tana J. Hess, CRR, FCRR, RMR
U.S. District Court Reporter
85 Broad Street
Charleston, SC 29401
843.779.0837
tana_hess@scd.uscourts.gov

Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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(Call to order of the court.)

THE COURT: Please be seated. Okay. I am convening
a hearing in the matter of Solar Eclipse Investment Fund XXXV
LLC, and East West Bank versus \$5,000,000.00 U.S. dollars, and
the Strauss Law Firm, LLC, in personam, 9:19-1176. It's before
me -- I have a temporary restraining order I granted, and there
is a motion by the plaintiff for a preliminary injunction.

could counsel for the plaintiff identify
themselves for the record, please?

MS. SHOUN: Yes, sir, Your Honor. Thank you. I'm
Cheryl Shoun. I'm here on behalf of plaintiffs with my partner
Bruce Wallace.

MR. WALLACE: Good afternoon, Your Honor.

THE COURT: Yes. And for defense?

MR. OVERSTREET: Your Honor, David Overstreet
represents Strauss Law Firm here with Mike McCall.

THE COURT: And for the record, no one from the
Strauss Law Firm is here; is that correct?

MR. OVERSTREET: That's correct, Your Honor. I'm
here for them.

THE COURT: Okay. Now, the response I received from
the -- from the Defendant Strauss Law Firm was that it was not
going to contest the entry of a preliminary injunction, but --
and it represented that -- that the \$5 million had come into
its account and had departed; is that correct?

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1 MR. OVERSTREET: Yes, Your Honor.
2 THE COURT: And, Mr. Overstreet, as I understand the
3 situation here, funds were transferred from this Solar Eclipse
4 Investment Fund XXXV, LLC to the Strauss Law Firm; is that
5 correct? was it directly from the fund -- I'll call that "the
6 fund" -- to the Strauss Law Firm?
7 MR. OVERSTREET: I apologize, Your Honor. I'm not
8 sure of the particulars; only that the 5 million did come to
9 the Strauss Law Firm Iol'ta.
10 THE COURT: You're not sure where it came from?
11 MR. OVERSTREET: We do have a copy of the wire for
12 that night.
13 MR. MCCALL: I believe, Your Honor, that the funds
14 did come from an account that was in the name of Solar.
15 THE COURT: So it's -- it's the solar account and
16 then into the Strauss Law Firm?
17 MR. MCCALL: Correct, Your Honor.
18 THE COURT: And to your knowledge, had the Strauss
19 Law Firm been a normal recipient of funds from that account?
20 MR. OVERSTREET: Yes, Your Honor, I do believe
21 Strauss Law Firm had received funds from them in the past to
22 the Iol'ta.
23 THE COURT: From the Solar Eclipse Investment Fund
24 XXXV?
25 MR. OVERSTREET: I'm not aware of that, Judge. I

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1 don't know the answer to that.
2 THE COURT: So where would they have gotten funds
3 from?
4 MR. OVERSTREET: I just know they had an ongoing
5 relationship with the Carpooffs and their entities.
6 THE COURT: The Carpooffs. And could you state who
7 they are?
8 MR. OVERSTREET: My understanding is they own DC
9 Solar.
10 THE COURT: Okay. So -- so there was a personal
11 relationship between Carpooff -- the Carpooffs and the Strauss
12 Law Firm?
13 MR. OVERSTREET: Attorney-client relationship, yes,
14 Your Honor.
15 THE COURT: Okay. And had the -- and what were the
16 Carpooffs' role in transferring this \$5 million from this --
17 this fund to the Strauss Law Firm?
18 MR. OVERSTREET: I'm sorry, Judge. What was their
19 role?
20 THE COURT: What was the role of the Carpooffs
21 personally in transferring those funds?
22 MR. OVERSTREET: I'm sorry, Judge. I'm unaware of
23 that. I don't know.
24 THE COURT: You don't know. Who directed the money
25 to come to the Strauss Law Firm?

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1	4:02PM	MR. OVERSTREET: My understanding, Judge, is that
2	4:02PM	Mr. Strauss was not aware that the money was going to come.
3	4:02PM	THE COURT: So how did he even learn of it?
4	4:02PM	MR. OVERSTREET: It hit his account.
5	4:02PM	THE COURT: Well, and then did he communicate with
6	4:02PM	somebody?
7	4:02PM	MR. OVERSTREET: Yes, Your Honor.
8	4:02PM	THE COURT: And who did he communicate with?
9	4:02PM	MR. OVERSTREET: My understanding is he spoke with
10	4:02PM	Mr. Carpoﬀ.
11	4:02PM	THE COURT: Mr. Carpoﬀ?
12	4:02PM	MR. OVERSTREET: I think so.
13	4:02PM	THE COURT: And are there any written instructions
14	4:02PM	from Mr. Carpoﬀ or anyone else about where to distribute this
15	4:02PM	\$5 million?
16	4:02PM	MR. OVERSTREET: I do believe, Your Honor, there is
17	4:02PM	some email correspondence that we can certainly pull and hand
18	4:02PM	to the other side regarding the distribution of the funds.
19	4:03PM	THE COURT: And was that your understanding from
20	4:03PM	Mr. Carpoﬀ to Mr. Strauss?
21	4:03PM	MR. OVERSTREET: I believe so, Your Honor.
22	4:03PM	THE COURT: Okay. And did that detail where these
23	4:03PM	amounts were to go? I mean, how would Mr. Strauss know where
24	4:03PM	to send the money?
25	4:03PM	MR. OVERSTREET: I believe he was invoiced from a

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1	4:03PM	number of entities.
2	4:03PM	THE COURT: How did they know that he would have the
3	4:03PM	money?
4	4:03PM	MR. OVERSTREET: I don't know that, Your Honor. I
5	4:03PM	assume Mr. Carpoﬀ and his entities retained those other
6	4:03PM	entities, which as we discussed were law firms.
7	4:03PM	THE COURT: Okay. Well, some of them are law firms.
8	4:03PM	Not all of them. Let's go through those. \$2 million went to
9	4:03PM	the Skadden Arps Law Firm?
10	4:03PM	MR. OVERSTREET: Yes, Your Honor. That's my
11	4:03PM	understanding.
12	4:03PM	THE COURT: And we have met in chambers, so I know a
13	4:03PM	little bit about this from you, Mr. Overstreet, and my
14	4:03PM	understanding is that Skadden Arps represented one of the
15	4:03PM	Carpoﬀs for about six hours; is that correct?
16	4:04PM	MR. MCCALL: Your Honor, I believe that Skadden
17	4:04PM	represented Mr. Carpoﬀ for a month approximately and then
18	4:04PM	Mrs. Carpoﬀ for the better part of a day on the day of the
19	4:04PM	seizure, and I believe they've also been engaged by DC Solar in
20	4:04PM	various capacities over several years.
21	4:04PM	THE COURT: Okay. And the \$2 million is in the
22	4:04PM	Skadden Arps account? Is that what you understand?
23	4:04PM	MR. MCCALL: That's my understanding.
24	4:04PM	THE COURT: And are they holding it? Have they
25	4:04PM	expended those moneys?

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1 MR. MCCALL: My understanding, Your Honor, is that
2 those funds are currently sitting in an interest-bearing
3 account, all of them.

4 THE COURT: And is -- by the way, was Mr. Strauss
5 aware the day before these moneys were transferred that the
6 Federal Government had executed search warrants and seizure
7 warrants and had seized all of the assets of the Carpoffs and
8 DC Solar? Was he aware of that?

9 MR. OVERSTREET: I don't know, Your Honor.

10 THE COURT: And then there's something called Paul
11 Meltzer, a professional corporation in Santa Cruz, California.
12 What is that? \$500,000.

13 MR. MCCALL: Our understanding, Your Honor, is
14 Mr. Meltzer is a criminal defense attorney in California who
15 represents either Mr. or Mrs. Carpoff.

16 THE COURT: Okay. And then there is a \$750,000
17 payment to worldwide property and Casual Ltd. SAC. What is
18 that?

19 MR. MCCALL: Your Honor, that is -- that is a portion
20 of a premium owed for Mr. Carpoff's captive insurance company,
21 Bay Shore Select, for the upcoming year.

22 THE COURT: And who manages that worldwide property
23 and Casualty Ltd. SAC?

24 MR. MCCALL: Who manages it?

25 THE COURT: Yes.

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8

1 MR. MCCALL: I mean, I don't know if manage is the
2 appropriate term, but I can represent to the Court that the
3 Strauss Law Firm -- or Peter Strauss certainly has control
4 over --

5 THE COURT: Has control over that fund, that
6 \$750,000?

7 MR. MCCALL: Correct. And the same would be true for
8 the next \$750,000.

9 THE COURT: Madison First Property and Casualty,
10 another \$750,000. And so Mr. Strauss transferred those funds
11 that had come out of this investment fund to those accounts?

12 MR. MCCALL: Correct, Your Honor, for premiums for
13 the two captive insurance companies.

14 THE COURT: And these were captive insurance
15 companies. These were not DC Solar. This was something else?

16 MR. MCCALL: I believe they are DC Solar affiliated.
17 I believe that DC Solar Solutions is the insured for one of the
18 captives, and then DC Solar Distributors is the insured for one
19 of the --

20 THE COURT: Those are separate entities?

21 MR. MCCALL: Correct, Your Honor.

22 THE COURT: Yes, sir. I thought so.

23 MR. MCCALL: One is owned by Mr. Carpoff. One is
24 owned by Mrs. Carpoff.

25 THE COURT: And then the Law Office of Daniel Bakondi

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1 in San Francisco. Who is that? \$250,000.
2 MR. MCCALL: Your Honor, we were not -- we haven't
3 been able to find out exactly who Mr. Bakondi represents in
4 this, but it's our understanding it's one of the Carpoiffs in
5 some connection with the ongoing investigation.
6 THE COURT: Clark Hill PLLC LLC in Las Vegas.
7 \$275,000. What's that?
8 MR. MCCALL: That's law firm in Las Vegas, Your
9 Honor, that is the lead bankruptcy counsel for DC Solar and
10 affiliated entities.
11 THE COURT: And then Segal and Associates Client
12 Trust Account in Sacramento, 250,000. What's that?
13 MR. MCCALL: That is an engagement, a retainer for an
14 attorney, another criminal defense attorney in California named
15 Malcolm Segal who represents I believe Mr. Carpoiff in the
16 criminal matters.
17 THE COURT: Then \$175,000 to BR -- BRGR Revenue
18 Depository. What is that?
19 MR. MCCALL: That is Glassratner, Your Honor, which
20 is the -- a gentleman at Glassratner named Seth Freeman was
21 appointed as the chief restructuring officer for DC Solar, and
22 that was his retainer.
23 THE COURT: And then \$50,000 to BH Capital Ventures
24 LLC. What is that?
25 MR. MCCALL: We haven't -- we haven't found exactly

1 what BH Capital Ventures is, but our understanding is they have
2 some involvement in some real estate assets that they were
3 attempting to sell when the bankruptcy was in Chapter 11 before
4 it was converted into Chapter 7.
5 THE COURT: Well, bankruptcy wasn't filed until
6 February, and these were made in December.
7 MR. MCCALL: I believe the last two were made on
8 February 1st.
9 THE COURT: Oh, I see.
10 MR. MCCALL: And so --
11 THE COURT: Still before the bankruptcy filing.
12 MR. MCCALL: I believe it might have been the day of,
13 Your Honor, and I believe they're somehow connected with some
14 real estate transactions that they were trying to carry out in
15 the bankruptcy.
16 THE COURT: Well, here is my concern. From the
17 information I have, it appears that the \$5 million transfer to
18 the Strauss Law Firm is likely an illegal transfer, and those
19 recipients are in receipt of funds that should not have gone to
20 them from this fund. The fund was to purchase mobile solar
21 generators. It wasn't to pay all these lawyers and captive
22 funds and all of this, and it was certainly done in a way that
23 appears surreptitious to me. It's one day after the Government
24 has seized every asset they can of the Carpoiffs.
25 So there's a source of concern by the Court

1 about all of this, and I've asked you a lot of questions I
2 understand y'all can't answer for me. You just don't know the
3 answer. So I'm going to order this -- well, I'll schedule this
4 sometime Thursday. I'll going to order Mr. Strauss into the
5 Court here, and I'm going to order him to produce all the
6 documents related to the instructions he received for these
7 transfers.

8 I'm also going to extend the TRO to all of these
9 entities, and I'm going to offer them the opportunity to come
10 in to be heard on the preliminary injunction. I anticipate --
11 I don't think it takes a crystal ball -- that the plaintiff is
12 likely to add them as parties; is that fair, Ms. Shoun?

13 MS. SHOUN: Yes, sir, Your Honor, that is absolutely
14 fair.

15 THE COURT: And, you know, the easy way to do this is
16 simply to repatriate the moneys if there's some legal question
17 about it, and we'll set up a way in which that can be done to
18 the Court. I would urge you to go ahead and talk to
19 Mr. Strauss about that captive premium. And, you know, to the
20 extent that the \$5 million is repatriated, this Court doesn't
21 have any further jurisdiction.

22 I'll say on the record, I have been in
23 communication with the Bankruptcy Court. It does not appear
24 that this -- this liability, this obligation, this debt is
25 listed as a liability. They're not listed as creditors in the

1 bankruptcy. I've spoken to Judge Beasley about this. He has
2 asked me do what I can to repatriate these funds, and then once
3 we do that, we'll sort out between the two courts about whether
4 this is an asset of the bankruptcy or not. I don't know the
5 answer to that, but we'll need to get further evidence.

6 But right at this moment, I think the most
7 urgent thing is to -- is to restore the status quo, and to the
8 extent these law firms think they have some lawful entitlement
9 to it, they can come here and litigate that issue if they wish
10 before me. I think it's looking pretty dubious that they have
11 a right to those funds, and particularly under the
12 circumstances where Skadden Arps apparently particularly is
13 involved and these other criminal defense firms are fully aware
14 of the circumstances here, that there has been -- I mean, the
15 press accounts, there were dozens of FBI agents circling the
16 Carpoffs home. Judge Beasley tells me that every hearing he
17 has, he has SEC investigators and FBI agents sitting in the
18 audience, and I don't mind to say that my head of my U.S.
19 Attorneys Office is sitting in the back row here right now, and
20 there's a lot of Government interest in all of this.

21 So I don't have any desire to put more on my
22 plate than I need, but I'm going to -- I feel like the
23 plaintiffs have a legitimate claim to these funds, at least
24 what I've heard so far, and my job is to try to restore the
25 status quo to this, and then we can sort out who actually owns

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13

1 the money. Does that make sense to everybody?
2 MS. SHOUN: Yes, sir, Your Honor.
3 THE COURT: Mr. Overstreet, do you anticipate any
4 problem having Mr. Strauss appear on Thursday?
5 MR. OVERSTREET: Your Honor, I will call him when we
6 walk out of the courtroom. My understanding is he was in
7 Hilton Head when we spoke earlier, so I don't see that --
8 THE COURT: Let him know that if he seems to have any
9 difficulty getting here, I'm glad to have him escorted by the
10 marshals.
11 MR. OVERSTREET: Yes, sir.
12 THE COURT: Okay?
13 MR. OVERSTREET: Your Honor, if I could briefly add
14 one thing, my firm had some concern at the very beginning about
15 whether or not releasing the information related to the
16 distribution of these funds from the Iolita would in any way be
17 privileged. We'd be --
18 THE COURT: Mr. Overstreet, you raised that with me.
19 MR. OVERSTREET: Yes, Your Honor.
20 THE COURT: And I told you, and I will say on the
21 record that these are not protected, attorney-client privilege.
22 These transactions appear to be unlawful. They would not be
23 protected by privilege, and he appears -- it's not quite clear
24 what capacity Mr. Strauss actually received these funds since
25 he's taking some of the funds himself and putting them in

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14

1 accounts he controls.
2 MS. SHOUN, do you have anything else you wish to
3 add in terms of the Court --
4 MS. SHOUN: Your Honor, only one matter of logistics,
5 and that would be the service of the TRO as it will be extended
6 to these third parties.
7 THE COURT: Yeah, let's talk about that for a minute.
8 As a practical matter, I -- I will try to get something out
9 this afternoon if that is possible and on the record. I will
10 ask and direct both counsel to do everything possible to
11 communicate with each of these entities, to allow them to
12 number 1, be advised that those funds are restrained pending
13 further action of the Court, and I'm going to afford them the
14 opportunity to appear on Thursday, if they wish, before I
15 extend the preliminary injunction to them, and then I will
16 afford them further opportunity to address this issue with the
17 Court.
18 But what we're going to do is we're going to
19 restore the fund's support, and then if there's a claim to it,
20 we'll sort out among these various parties about who has a
21 legitimate claim to these funds.
22 MS. SHOUN: Your Honor, we are not in receipt of the
23 documents from which counsel I suppose and Your Honor is
24 reading.
25 THE COURT: Would you, Mr. Overstreet, hand Ms. Shoun


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15

1 those documents now?
2 MS. SHOUN: Thank you.
3 THE COURT: And I will before the end of the day
4 notice the hearing for Thursday. We'll come back and do that,
5 and we'll enter an order in just a few minutes.
6 Ms. Shoun, anything else I need to do at this
7 point from the plaintiff?
8 MS. SHOUN: Beg the Court's indulgence, Your Honor.
9 (Pause.)
10 MS. SHOUN: Nothing, Your Honor. Thank you.
11 THE COURT: Mr. Overstreet, anything further?
12 MR. OVERSTREET: No, sir. Thank you, Your Honor.
13 THE COURT: Very good. And, Mr. Overstreet, I don't
14 have even the slightest suggestion that you or your law firm
15 have done anything untoward here. It's quite clear you've come
16 in at a very late hour, and you've done everything you can to
17 try to straighten this out, and I appreciate that. And
18 we'll -- you know, if something inappropriate has happened,
19 it's not involved your law firm.
20 MR. OVERSTREET: Thank you, Your Honor.
21 MR. MCCALL: Thank you, Your Honor.
22 THE COURT: Thank you very much. This hearing is
23 adjourned.
24 MS. SHOUN: Thank you, Your Honor.
25

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1 * * * * *
2 CERTIFICATE
3 I, Tana J. Hess, CCR, FCRR, Official Court Reporter
4 for the United States District Court, District of South
5 Carolina, certify that the foregoing is a true and correct
6 transcript, to the best of my ability and understanding, from
7 the record of proceedings in the above-entitled matter.
8
9 
10 Tana J. Hess, CCR, FCRR, RMR
11 Official Court Reporter
12
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

* * * * *
SOLAR ECLIPSE INVESTMENT FUND
XXXV, LLC and EAST WEST BANK
* * * * *
versus
* * * * *
\$5,000,000.00 U.S. DOLLARS
DEPOSITED TO IOLTA ACCOUNT
OF THE STRAUSS LAW FIRM, LLC
IN REM, AND THE STRAUSS LAW
FIRM, LLC, *IN PERSONAM*
* * * * *

* Civil Action No. 9:19-cv-1176
* May 9, 2019
* * *

REPORTER'S OFFICIAL TRANSCRIPT OF THE
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION BEFORE THE
HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
MAY 9, 2019

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Appearances:

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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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EXHIBIT

B

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1	11:55	(Call to order of the Court.)
2	11:56	THE COURT: Good morning. Please be seated.
3	11:56	MS. SHOUN: Good morning, Your Honor.
4	11:56	THE COURT: Ms. Perry, we have folks on line as
5	11:56	well --
6	11:56	COURTROOM DEPUTY: Yes, Your Honor.
7	11:56	THE COURT: -- on the telephone? Okay. Okay.
8	11:56	Let's -- this is a -- the matter of Solar Eclipse Investment
9	11:56	Fund XXXV versus \$5,000,000.00 and the Strauss Law Firm.
10	11:56	Could counsel identify themselves for the
11	11:56	record, please?
12	11:56	MS. SHOUN: Yes, sir, Your Honor. Thank you. I'm
13	11:56	Cheryl Shoun with Nexsen Pruet here on behalf of the
14	11:57	plaintiffs. Sitting at counsel table with me is my partner,
15	11:57	Bruce Wallace. Also present, Your Honor, from Nexsen Pruet on
16	11:57	behalf of the plaintiffs is Val Stieglitz, and -- who is also
17	11:57	on the complaint on behalf of the plaintiffs, and Ron Jones,
18	11:57	who has not made a formal appearance, but we'd ask the Court
19	11:57	note his appearance here today.
20	11:57	THE COURT: Note his appearance as well, yes.
21	11:57	MS. SHOUN: Thank you, Your Honor.
22	11:57	THE COURT: Very good.
23	11:57	MR. OVERSTREET: Thank you, Your Honor. David
24	11:57	Overstreet representing the Strauss Law Firm.
25	11:57	THE COURT: Yes.

5

11:57 1 MR. ALLEN: Yes, Your Honor. Sam Allen on behalf of
11:57 2 Hamilton Captive Management LLC, which is a South Carolina
11:57 3 company. Also as the agent at this point in time for worldwide
11:57 4 Property Casualty and Madison First Property Casualty, which
11:57 5 are both bohemian companies.
11:57 6 THE COURT: These are recipients?
11:57 7 MR. ALLEN: They are, Your Honor.
11:57 8 THE COURT: Okay. Others representing recipients?
11:57 9 MR. WOOTEN: Your Honor, Patrick Wooten here on
11:57 10 behalf of several of the recipients: Skadden, Clark Hill,
11:57 11 Glassratner, the Law Offices of Paul Meltzer, and Segal and
11:58 12 Associates.
11:58 13 THE COURT: Okay.
11:58 14 MR. BARKER: Good morning, Your Honor. Jacob Barker
11:58 15 here on behalf of BH Capital Ventures LLC, one of the
11:58 16 recipients.
11:58 17 THE COURT: Okay. Well, folks, we certainly seem to
11:58 18 have attracted a little bit of attention. Now, there are some
11:58 19 folks online. Could folks online identify themselves?
11:58 20 MR. HARTMAN: Your Honor, this is Jeff Hartman in
11:58 21 Reno representing Christine Lovato in the DC Solar Solutions
11:58 22 case.
11:58 23 THE COURT: Very good. Thank you.
11:58 24 UNIDENTIFIED FEMALE SPEAKER: Good morning, Your
11:58 25 Honor. This is --

6

11:58 1 THE COURT: Please say that again.
11:58 2 MR. GAFFNEY: Your Honor, this is Don Gaffney of the
11:58 3 Snell and Wilmer Law Firm in Phoenix, Arizona, representing
11:58 4 Solarmore, a representative of approximately 20 investment
11:58 5 funds.
11:58 6 THE COURT: Okay.
11:58 7 MS. CARLYON: Good morning, Your Honor. Candace
11:59 8 Carlyon at Clark Hill PLC.
11:59 9 THE COURT: Okay. Anyone else?
11:59 10 MR. JUNG: Yes, good morning, Your Honor. This is --
11:59 11 THE COURT: Go ahead.
11:59 12 MR. JUNG: This is Curtis Jung. This is Curtis Jung
11:59 13 on behalf of the plaintiff, Solar Eclipse Investment Fund XXXV.
11:59 14 THE COURT: Okay.
11:59 15 MS. PROUT: This is Maita Prout, Deputy General
11:59 16 Counsel of East West Bank.
11:59 17 THE COURT: Anyone else?
11:59 18 MS. LI: Good morning, Your Honor. This is Annie Li
11:59 19 from Skadden Arps.
11:59 20 THE COURT: Okay. Anyone else?
11:59 21 Okay. Folks, I have been -- the purpose of this
11:59 22 particular hearing was that I had a hearing several days ago on
11:59 23 the 6th of May, and defense counsel appeared and was able to
12:00 24 answer some of my questions, but indicated on others that he
12:00 25 would have to defer to his client to answer questions. I'm

7

1 trying to sort out here a sort of threshold question, initially
2 a threshold question, and that is whether these funds, the \$5
3 million which is the subject of this litigation, was ever
4 taken -- taken under the control of DC Solar, or did it go from
5 the investment fund directly to some other third party and not
6 DC solar? That obviously has potential relevance to the
7 jurisdiction of this Court, the jurisdiction of the Bankruptcy
8 Court. And I was hoping that Mr. Strauss might appear and
9 provide us more detail about exactly how this transaction
10 occurred. We know that it came from the -- it's the plaintiff.
11 I'm going to call it "the fund". This is Solar Eclipse
12 Investment Fund XXXV. I'll call it "the fund" here. How it
13 got from the fund to Mr. Strauss' law firm, and what we can
14 talk about in terms of instructions you received, who gave
15 those instructions. So who facilitated the transfer? Who gave
16 instructions for the disbursement to these recipients?
17 And all of that is at least at this stage trying
18 to sort out whether this was ever an asset of DC Solar and went
19 into the accounts of DC Solar, or did it go -- or was it in
20 some way taken by someone, transferred to a third party. We'll
21 see who that is; and whether that would then take it outside of
22 the bankruptcy estate. I'm not reaching a conclusion that it
23 would. I don't know -- literally, I'm telling you I don't know
24 the answer to this.

25 So if I could ask -- initially what I intend to

8

1 do is put Mr. Strauss on the stand. Put him under oath, put
2 him on the stand. I intend to ask some questions, and then the
3 parties to the lawsuit may ask questions as well.

4 So, Mr. Strauss, if you would approach my
5 courtroom deputy, and she will administer the oath.

6 THE COURTROOM DEPUTY: Place your left hand on the
7 Bible and raise your right hand. Please state your full name.

8 THE WITNESS: Peter Joseph Strauss.
9 (Witness sworn.)

10 COURTROOM DEPUTY: Thank you. Please take the stand.

11 PETER JOSEPH STRAUSS,

12 a witness called by the Court, being first duly sworn, was
13 examined and testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q. Could you state your full name, please, sir?

17 A. Peter Joseph Strauss.

18 Q. And, Mr. Strauss, you are a licensed attorney; is that
19 correct?

20 A. Yes.

21 Q. And do you also operate businesses beyond just simply
22 operating a law practice?

23 A. Yes, I do.

24 Q. What's the nature of those businesses?

25 A. A captive insurance management firm.

9

STRAUSS - EXAMINATION BY THE COURT

1	12:03	Q. Okay. And what's the name of that firm?
2	12:03	A. Hamilton Captive Management.
3	12:03	Q. And I believe that's one of the two companies that
4	12:03	received payments after the funds arrived in your account; is
5	12:03	that correct?
6	12:03	A. On advice of counsel, I have to invoke my Fifth Amendment
7	12:03	privilege.
8	12:04	Q. You're asserting your Fifth Amendment right to that
9	12:04	question?
10	12:04	A. Yes, Your Honor.
11	12:04	Q. You -- can you share with me how the funds came to you,
12	12:04	from what account the funds derived that came to the Strauss
13	12:04	Law Firm?
14	12:04	A. I'm sorry, Your Honor. I have to invoke my Fifth
15	12:04	Amendment again --
16	12:04	Q. Because --
17	12:04	A. -- on advice of counsel.
18	12:04	Q. -- your answer may tend to incriminate you?
19	12:04	A. On advice of counsel, I --
20	12:04	Q. Well, that's what it is, is it may tend to incriminate
21	12:04	you. You're asserting your Fifth Amendment right because your
22	12:04	response may tend to incriminate you? Is that what you're
23	12:04	telling me?
24	12:04	A. I'm asserting my Fifth Amendment right on advice of
25	12:04	counsel.

10

STRAUSS - EXAMINATION BY THE COURT

1	12:04	Q. Yeah, but that's -- advice of counsel is not a Fifth
2	12:04	Amendment right. Fifth Amendment right is that you have a
3	12:04	right to remain silent, because your response may tend to
4	12:04	incriminate you, and you don't -- there's no requirement that
5	12:05	you be a witness against yourself. That is the basis of the
6	12:05	Fifth Amendment. Are you insisting -- asserting the Fifth
7	12:05	Amendment right because your response may tend to incriminate
8	12:05	you?
9	12:05	A. Yes, Your Honor.
10	12:05	Q. Okay. Did you -- in this transfer of funds, did you have
11	12:05	any interaction or instructions from either Mr. or
12	12:05	Mrs. Carpooff?
13	12:05	A. Your Honor, on advice of counsel, I have to invoke my
14	12:05	Fifth Amendment right.
15	12:05	Q. Your law firm received funds. We know that. Your
16	12:05	attorneys have provided us documents indicating that. Can you
17	12:05	tell me how your law firm -- how your law firm characterized
18	12:06	those funds in your Iolta account?
19	12:06	A. On advice of counsel, I have to invoke my Fifth Amendment
20	12:06	right.
21	12:06	Q. Had you previously received funds in this manner as you
22	12:06	received them in the \$5 million? Had that been a routine
23	12:06	practice of any type?
24	12:06	A. On advice of counsel, I have to invoke my Fifth Amendment
25	12:06	right.

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STRAUSS - EXAMINATION BY THE COURT

1 12:06 Q. Who gave you the instructions regarding the nine entities
2 12:06 which were to receive the \$5 million?
3 12:06 A. On advice of counsel, I have to invoke my Fifth Amendment
4 12:06 right.
5 12:06 Q. I take it to any question concerning the arrival or
6 12:07 instructions or the disbursement of funds, you're going to
7 12:07 assert your Fifth Amendment right; is that correct?
8 12:07 A. Yes, Your Honor.
9 12:07 THE COURT: Okay. Any questions from the plaintiff?
10 12:07 MS. SHOUN: May I beg the Court's indulgence for just
11 12:07 a moment, Your Honor?
12 12:07 THE COURT: Yes.
13 12:07 (Pause.)
14 12:07 MS. SHOUN: Your Honor, if it may please the Court,
15 12:07 counsel for plaintiffs have some questions, and just as a bit
16 12:07 of a preface to this, Your Honor, I understand what Mr. Strauss
17 12:07 has indicated to the Court about invoking his Fifth Amendment
18 12:07 rights. Nonetheless, it is our understanding because this is a
19 12:07 civil matter that it's -- it behooves us to go ahead and
20 12:07 present these questions to Mr. Strauss, even though he's
21 12:07 indicated what his answer is going to be. So I would just ask
22 12:08 for the Court's patience and indulgence while we go through
23 12:08 this process.
24 12:08 THE COURT: Keeping them within reason. I think he's
25 12:08 indicated to us that he is going to assert his Fifth Amendment

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STRAUSS - CROSS-EXAMINATION

1 12:08 right, but please proceed.
2 12:08 MS. SHOUN: Yes, sir. Thank you, Your Honor.
3 12:08 CROSS-EXAMINATION
4 12:08 BY MS. SHOUN:
5 12:08 Q. Mr. Strauss, have you ever represented Solar Eclipse
6 12:08 Investment Fund XXXV?
7 12:08 A. On advice of counsel, I need to invoke my Fifth Amendment
8 12:08 right.
9 12:08 Q. Yes, sir. For ease of reference, I will hereinafter refer
10 12:08 to that entity, Solar Eclipse Investment Fund XXXV, simply as
11 12:08 "the fund".
12 12:08 Were -- have you ever acted as counsel for DC
13 12:08 Solar Solutions?
14 12:08 A. On advice of counsel, I'm invoking my Fifth Amendment
15 12:08 right.
16 12:08 Q. Did you receive any funds on December 19th, 2018 as
17 12:08 counsel for DC Solar Solutions?
18 12:08 A. On advice of counsel, I'm invoking my Fifth Amendment.
19 12:08 Q. Do you have a signed, valid retainer agreement with DC
20 12:08 Solar Solutions?
21 12:08 A. On advice of counsel, I'm invoking my Fifth Amendment
22 12:08 right.
23 12:08 Q. When did you first review the limited liability company
24 12:09 agreement of Solar Eclipse Investment Fund?
25 12:09 A. On advice of counsel, I'm invoking my Fifth Amendment

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STRAUSS - CROSS-EXAMINATION

1	12:09	right.
2	12:09	Q. When did you first read the solar equipment purchase
3	12:09	agreement entered into between the fund and DC Solar Solutions?
4	12:09	A. On advice of counsel, I'm invoking my Fifth Amendment
5	12:09	right.
6	12:09	Q. Yes, sir. Mr. Strauss, have you presented to this Court
7	12:09	today all documentation the Court required you to present to it
8	12:09	relative to the \$5 million wired into the Iolta account at the
9	12:09	Strauss Law Firm and all monies wired out of that \$5 million?
10	12:09	A. On advice of counsel, I'm invoking my Fifth Amendment
11	12:09	right.
12	12:09	Q. Mr. Strauss, in responding to the Court's order that all
13	12:09	documents be produced relative to the wire of the \$5 million
14	12:09	into the Iolta account of the Strauss Law Firm and all monies
15	12:09	wired out of the Strauss Law Firm, have you undertaken a
16	12:09	thorough examination of the records, your personal records, the
17	12:09	records of the Strauss Law Firm, and the records of Hamilton
18	12:09	Captive Management?
19	12:09	A. On advice of counsel, I'm invoking my Fifth Amendment
20	12:10	right.
21	12:10	Q. What is the physical address of the Strauss Law Firm?
22	12:10	A. 10 Hospital Center Common, Hilton Head Island, South
23	12:10	Carolina, 29926.
24	12:10	Q. Does it maintain any other physical presence?
25	12:10	A. I don't know how to answer that. We're moving offices

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STRAUSS - CROSS-EXAMINATION

1	12:10	soon.
2	12:10	Q. I'm sorry?
3	12:10	A. We're moving offices soon. I don't know how to answer the
4	12:10	question.
5	12:10	THE COURT: Answer it as of today.
6	12:10	A. As of today, no.
7	12:10	Q. Are records of the Strauss Law Firm maintained at any
8	12:10	location other than the 10 Hospital Drive address in Hilton
9	12:10	Head Island?
10	12:10	A. On advice of counsel, I'm invoking my Fifth Amendment
11	12:10	right.
12	12:10	Q. Are the records of Hamilton Captive maintained at any
13	12:10	physical address other than 10 Hospital Drive, Hilton Head
14	12:10	Island?
15	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
16	12:11	right.
17	12:11	Q. How many personal email addresses do you maintain?
18	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
19	12:11	right.
20	12:11	Q. Do you maintain more than one?
21	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
22	12:11	right.
23	12:11	Q. How many personal telephone numbers do you maintain?
24	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
25	12:11	right.

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STRAUSS - CROSS-EXAMINATION

1	12:11	Q. How many phone numbers are maintained, owned by, or
2	12:11	utilized by the Strauss Law Firm, LLC?
3	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
4	12:11	right.
5	12:11	Q. How many telephone numbers are owned, utilized or
6	12:11	otherwise maintained by Hamilton Captive?
7	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
8	12:11	right.
9	12:11	Q. Mr. Strauss, have you been apprised of any criminal action
10	12:11	being pursued against you?
11	12:11	A. On advice of counsel, I'm invoking my Fifth Amendment
12	12:11	right.
13	12:12	Q. Have you received a target letter indicating any action is
14	12:12	being investigated or pursued against you?
15	12:12	A. On advice of counsel, I'm invoking my Fifth Amendment
16	12:12	right.
17	12:12	Q. Are you aware of any criminal investigation or criminal
18	12:12	action that may be pursued against any employee or other
19	12:12	individual affiliated with the Strauss Law Firm?
20	12:12	A. On advice of counsel, I'm invoking my Fifth Amendment
21	12:12	right.
22	12:12	Q. Are you aware of any criminal investigation or action that
23	12:12	is being pursued against any individual employed by or
24	12:12	otherwise affiliated with Hamilton Captive?
25	12:12	A. On advice of counsel, I'm invoking my Fifth Amendment

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STRAUSS - CROSS-EXAMINATION

1	12:12	right.
2	12:12	Q. In response to the Court's question, you indicated, I do
3	12:12	believe, that you hold a valid license as a member of the South
4	12:12	Carolina Bar; is that correct?
5	12:12	A. Yes.
6	12:12	Q. Do you hold any other licenses issued by the state of
7	12:12	South Carolina or any other state?
8	12:13	A. Law license?
9	12:13	Q. Any other license. I mean, other than maybe a fishing
10	12:13	license or a driver's license. Do you have to -- do you hold a
11	12:13	license for your activity associated with captive management
12	12:13	work, with your insurance captive management group?
13	12:13	A. On advice of counsel, I'll invoke my Fifth Amendment
14	12:13	right.
15	12:13	Q. Mr. Strauss, is it your testimony that the \$5 million at
16	12:13	issue here just landed in the Iolita account of the Strauss Law
17	12:13	Firm on December 19th, 2018 without any prior notice to the
18	12:13	Strauss Law Firm?
19	12:13	A. On advice of counsel, I'm invoking my Fifth Amendment
20	12:13	right.
21	12:13	Q. Do you have any agreement or document that sets forth the
22	12:13	basis for those funds, the \$5 million being wired into the
23	12:13	Iolita account of the Strauss Law Firm on December 19th?
24	12:13	A. On advice of counsel, I'm invoking my Fifth Amendment
25	12:13	right.

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STRAUSS - CROSS-EXAMINATION

1	12:13	Q. On December 19th, 2018, did you indeed represent DC Solar
2	12:14	Solutions?
3	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
4	12:14	right.
5	12:14	Q. On December 19th, 2018, did you represent the fund?
6	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
7	12:14	right.
8	12:14	Q. On December 19th, 2018, did you represent either Jeffrey
9	12:14	or Paulette Carpoiff?
10	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
11	12:14	right.
12	12:14	Q. Mr. Strauss, what individual or entity did you represent
13	12:14	on December 19th, 2018 that's related in any manner to the wire
14	12:14	of \$5 million into your Iolta account from the fund?
15	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
16	12:14	right.
17	12:14	Q. How did you learn that \$5 million had been wired into your
18	12:14	Iolta account?
19	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
20	12:14	right.
21	12:14	Q. What did you do when you learned \$5 million had been wired
22	12:14	into your Iolta account?
23	12:14	A. On advice of counsel, I'm invoking my Fifth Amendment
24	12:15	right.
25	12:15	Q. Mr. Strauss, when did you become aware that the business

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STRAUSS - CROSS-EXAMINATION

1	12:15	locations of DC Solar Solutions had been the subject of various
2	12:15	search and seizure warrants of the Federal Government?
3	12:15	A. On advice of counsel, I'm invoking my Fifth Amendment
4	12:15	right.
5	12:15	Q. At what point did you become aware that the principals of
6	12:15	the DC Solar Solutions and affiliated entities had been the
7	12:15	subject of various search and seizures warrants of the Federal
8	12:15	Government?
9	12:15	A. On advice of counsel, I'm invoking my Fifth Amendment
10	12:15	right.
11	12:15	Q. Mr. Strauss, what direction did you get from the Skadden
12	12:15	Law Firm as to the incoming wire of the \$5 million into your
13	12:15	Iolta account?
14	12:15	A. On advice of counsel, I'm invoking my Fifth Amendment
15	12:15	right.
16	12:15	Q. And what instruction did you get from the Skadden Law Firm
17	12:15	as to the disbursement of any of the \$5 million out of the
18	12:15	Iolta account of the Strauss Law Firm?
19	12:15	A. On advice of counsel, I'm invoking my Fifth Amendment
20	12:15	right.
21	12:16	Q. Have either Jeffrey or Paulette Carpoiff, together or
22	12:16	individually, ever been clients of Hamilton Captive Management,
23	12:16	LLC?
24	12:16	A. On advice of counsel, I'm invoking my Fifth Amendment
25	12:16	right.

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STRAUSS - CROSS-EXAMINATION

12:16	1	Q. When most recent to December 19th, 2018 were the Carpoffs,
12:16	2	either together or individually, clients of Hamilton Captive
12:16	3	Management?
12:16	4	A. On advice of counsel, I'm invoking my Fifth Amendment
12:16	5	right.
12:16	6	Q. Did you have any conversations with either Mr. or
12:16	7	Mrs. Carpoff on December -- on or about December 19th, 2018,
12:16	8	concerning the incoming \$5 million into the Iolta account?
12:16	9	A. On advice of counsel, I'm invoking my Fifth Amendment
12:16	10	right.
12:16	11	Q. And what conversations did you have with either Mr. or
12:16	12	Mrs. Carpoff when any of those funds were transferred out of
12:16	13	the Iolta account?
12:16	14	A. On advice of counsel, I'm invoking my Fifth Amendment
12:17	15	right.
12:17	16	Q. Mr. Strauss, what do you understand to be the purpose of
12:17	17	the wire in the amount of \$2 million that was sent from your
12:17	18	Iolta account to Skadden Arps?
12:17	19	A. On advice of counsel, I'm invoking my Fifth Amendment
12:17	20	right.
12:17	21	Q. Have you ever been associated or otherwise affiliated with
12:17	22	Skadden Arps prior to December 19th, 2018?
12:17	23	A. On advice of counsel, I'm invoking my Fifth Amendment
12:17	24	right.
12:17	25	Q. Did you and Skadden have any joint representation

20

STRAUSS - CROSS-EXAMINATION

12:17	1	agreement relative to the Carpoffs?
12:17	2	A. On advice of counsel, I'm invoking my Fifth Amendment
12:17	3	right.
12:17	4	Q. Is there any joint representation agreement between your
12:17	5	law firm and Skadden relative to representation of DC Solar
12:17	6	solutions or any other DC Solar entity?
12:17	7	A. On advice of counsel, I'm invoking my Fifth Amendment
12:17	8	right.
12:17	9	Q. What is the total amount of a wire that you may make from
12:17	10	your Iolta account that's held at South State Bank in a one-day
12:18	11	period?
12:18	12	A. On advice of counsel, I'm invoking my Fifth Amendment
12:18	13	right.
12:18	14	Q. Before wiring any funds whatsoever out of the Iolta
12:18	15	account -- and by funds, I do mean again the \$5 million that
12:18	16	came into your account -- did you make any inquiry of anybody
12:18	17	of the purpose for such wires out of that account?
12:18	18	A. On advice of counsel, I'm invoking my Fifth Amendment
12:18	19	right.
12:18	20	Q. Mr. Strauss, how many wires out of your Iolta account did
12:18	21	you make?
12:18	22	A. On advice of counsel, I'm invoking my Fifth Amendment
12:18	23	right.
12:18	24	Q. When you -- when the wires were made out of the Iolta
12:18	25	account of the Strauss Law Firm, did you personally undertake

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STRAUSS - CROSS-EXAMINATION

1	12:18	that action?
2	12:18	A. On advice of counsel, I'm invoking my Fifth Amendment
3	12:18	right.
4	12:18	Q. Did you appear at a physical location of South State Bank
5	12:18	to make those transfers out?
6	12:19	A. On advice of counsel, I'm invoking my Fifth Amendment
7	12:19	right.
8	12:19	Q. Were these wires made pursuant to telephone conversations
9	12:19	with a representative of South State Bank?
10	12:19	A. On advice of counsel, I'm invoking my Fifth Amendment
11	12:19	right.
12	12:19	Q. And with whom at South State did you deal when making any
13	12:19	of the wires out of the Iolta account represented by the \$5
14	12:19	million?
15	12:19	A. On advice of counsel, I'm invoking my Fifth Amendment
16	12:19	right.
17	12:19	Q. Mr. Strauss, what is your familiarity with the
18	12:19	relationship between Skadden and Mr. and/or Mrs. Carpoff?
19	12:19	A. On advice of counsel, I'm invoking my Fifth Amendment
20	12:19	right.
21	12:19	Q. What is your understanding of the relationship between
22	12:19	Skadden and DC Solar Solutions or any other DC Solar entities?
23	12:20	A. On advice of counsel, I'm invoking my Fifth Amendment
24	12:20	right.
25	12:20	Q. Mr. Strauss, what is your understanding of the

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STRAUSS - CROSS-EXAMINATION

1	12:20	relationship of any other recipient of the wired funds from
2	12:20	your Iolta account to Jeffrey or Paulette Carpoff?
3	12:20	A. On advice of counsel, I'm invoking my Fifth Amendment
4	12:20	right.
5	12:20	Q. What is your understanding of the relationship between any
6	12:20	of the entities to which you wired funds and DC Solar Solutions
7	12:20	or other DC Solar entities?
8	12:20	A. On advice of counsel, I'm invoking my Fifth Amendment
9	12:20	right.
10	12:20	Q. Have you discussed this proceeding with anybody at
11	12:20	Skadden?
12	12:20	A. On advice of counsel, I'm invoking my Fifth Amendment
13	12:20	right.
14	12:20	Q. Have you discussed this proceeding with any individual or
15	12:20	entity affiliated with any other recipients of the \$5 million
16	12:20	wired out of your Iolta account?
17	12:20	A. On advice of counsel, I'm invoking my Fifth Amendment
18	12:20	right.
19	12:21	Q. Mr. Strauss, what is the affiliation between the fund and
20	12:21	Worldwide Property and Casualty?
21	12:21	A. On advice of counsel, I'm invoking my Fifth Amendment
22	12:21	right.
23	12:21	Q. Mr. Strauss, what is the relationship to your knowledge
24	12:21	between the fund and Madison First Property and Casualty?
25	12:21	MR. ALLEN: Objection, Your Honor. It's outside the

23

STRAUSS - CROSS-EXAMINATION

12:21	1	pleadings.
12:21	2	THE COURT: Overruled.
12:21	3	THE WITNESS: On advice of counsel, I'm invoking my
12:21	4	Fifth Amendment right.
12:21	5	BY MS. SHOUN:
12:21	6	Q. Mr. Strauss, what knowledge do you have of any
12:21	7	relationship between Worldwide Property and Casualty or Madison
12:21	8	First Property and Casualty and DC Solar Solutions?
12:21	9	A. On advice of counsel, I'm invoking my Fifth Amendment
12:21	10	right.
12:22	11	MS. SHOUN: Your Honor, if I may approach?
12:22	12	THE COURT: You may.
12:22	13	(Pause.)
12:23	14	THE COURT: Anything further?
12:23	15	MS. SHOUN: Yes, sir. If I may approach the witness
12:23	16	with a copy of that or --
12:23	17	THE COURT: You may.
12:23	18	MS. SHOUN: Thank you.
12:24	19	BY MS. SHOUN:
12:24	20	Q. Mr. Strauss, I'm going to hand you what purports to be a
12:24	21	letter dated March 22nd, 2019 from me to you and to the Strauss
12:24	22	Law Firm LLC, and I'm going to ask you if you recognize that
12:24	23	document?
12:24	24	A. Yes.
12:24	25	Q. And did you receive that document?

24

STRAUSS - CROSS-EXAMINATION

12:24	1	A. Yes.
12:24	2	Q. And you've had an opportunity to review that document
12:24	3	prior to today's date?
12:24	4	A. Yes.
12:24	5	Q. And that is a letter from me to you of March 22nd, 2019;
12:24	6	is that correct?
12:24	7	A. Yes.
12:24	8	Q. Okay. And that document asks you, does it not, to provide
12:24	9	an accounting of the funds, the \$5 million that was transferred
12:24	10	into the Iolta account of the Strauss Law Firm and an
12:24	11	explanation of any monies that may have been transferred out;
12:24	12	is that right?
12:24	13	A. Yes.
12:25	14	THE COURT: Mr. Overstreet, you need to quit nodding
12:25	15	and communicating to your client.
12:25	16	MR. OVERSTREET: Yes, Your Honor.
12:25	17	MS. SHOUN: Your Honor, just as a housekeeping
12:25	18	matter, we'd ask that this be made the plaintiff's first
12:25	19	exhibit.
12:25	20	THE COURT: I'm sorry?
12:25	21	MS. SHOUN: We'd just ask that this be made the
12:25	22	plaintiff's first exhibit. The witness has identified it.
12:25	23	THE COURT: Any objection?
12:25	24	MR. OVERSTREET: No objection.
12:25	25	THE COURT: Exhibit Number 1 is admitted. Please

25

STRAUSS - CROSS-EXAMINATION

1	proceed.
2	MS. SHOUN: Your Honor, if I then may approach?
3	THE COURT: You may.
4	MS. SHOUN: And may I provide a copy to Your Honor at
5	the same time as --
6	THE COURT: Thank you.
7	BY MS. SHOUN:
8	Q. Mr. Strauss, I've handed you a document that purports to
9	be an email from Peter Strauss at
10	pstrauss@thestrausslawfirm.com dated March 25th, 2019 at 6:31
11	p.m. Do you recognize this document?
12	MR. OVERSTREET: I'm sorry, can I see a copy of that?
13	MS. SHOUN: Oh, I'm so sorry. I thought I handed
14	that to you.
15	THE WITNESS: On advice of counsel, I'm going to
16	invoke my Fifth Amendment right.
17	BY MS. SHOUN:
18	Q. You're invoking your Fifth Amendment right as to whether
19	you've seen that document?
20	A. Yes.
21	Q. I'm sorry?
22	A. Yes.
23	Q. Okay. Thank you. Mr. Strauss, did you write the text of
24	that particular document?
25	A. On advice of counsel, I'm invoking my Fifth Amendment

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STRAUSS - CROSS-EXAMINATION

1	right.
2	Q. Mr. Strauss, when this particular document -- this email
3	was written on March 25th, 2019, did -- did anybody assist you
4	in writing this email?
5	A. On advice of counsel, I'm invoking my Fifth Amendment
6	right.
7	Q. Did anybody write this email for you to use as your
8	response to the letter on behalf of the fund dated March 22nd,
9	2019?
10	A. On advice of counsel, I'm invoking my Fifth Amendment
11	right.
12	Q. At what point, Mr. Strauss, did you have the documentation
13	necessary for you to reach a conclusion that Solutions is the
14	only party that had an interest in and right to the \$5 million
15	in your Iolta account?
16	A. On advice of counsel, I'm invoking my Fifth Amendment
17	right.
18	Q. And it would be accurate, would it not, Mr. Strauss, to
19	say that no monies were ever wired or otherwise delivered out
20	of your Iolta account to DC Solutions; is that correct?
21	A. On advice of counsel, I'm invoking my Fifth Amendment
22	right.
23	Q. At any point, did you attempt to return the \$5 million
24	wired into your escrow account to Fund XXXV?
25	A. On advice of counsel, I'm invoking my Fifth Amendment

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STRAUSS - CROSS-EXAMINATION

1	12:27	right.
2	12:27	Q. Did you wire \$500,000 to Paul Meltzer on behalf of
3	12:27	Paulette Carpoﬀ?
4	12:27	A. On advice of counsel, I'm invoking my Fifth Amendment
5	12:27	right.
6	12:28	Q. Did you wire \$250,000 to Daniel Bakondi for -- on behalf
7	12:28	of Jeffrey Carpoﬀ?
8	12:28	A. On advice of counsel, I'm invoking my Fifth Amendment
9	12:28	right.
10	12:28	Q. Did you wire \$250,000 from your Iolita account to Segal and
11	12:28	Associates as a personal retainer for Jeffrey Carpoﬀ?
12	12:28	A. On advice of counsel, I'm invoking my Fifth Amendment
13	12:28	right.
14	12:28	Q. Mr. Strauss, as to any wires of the \$5 million from those
15	12:28	three entities -- Paul Meltzer, Daniel Bakondi, or the Segal
16	12:28	and Associates -- for whom were those transfers made?
17	12:28	A. On advice of counsel, I'm invoking my Fifth Amendment
18	12:28	right.
19	12:28	Q. And who instructed you to make those transfers?
20	12:28	A. On advice of counsel, I'm invoking my Fifth Amendment
21	12:28	right.
22	12:28	MS. SHOUN: Oh, Your Honor, I'm sorry. As a
23	12:28	housekeeping matter, the second document handed up to
24	12:28	Mr. Strauss, I do think he identified it, but has invoked his
25	12:29	Fifth Amendment as to any other substantive answers on it, but

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STRAUSS - CROSS-EXAMINATION

1	12:29	I would ask the Court still admit it as an exhibit.
2	12:29	THE COURT: Exhibit -- is there an objection?
3	12:29	MR. OVERSTREET: Without objection.
4	12:29	THE COURT: Exhibit Number 2 is admitted without
5	12:29	objection.
6	12:29	BY MS. SHOUN:
7	12:29	Q. Mr. Strauss, I'm going to go back to that exhibit. I'm
8	12:29	sorry. I'm jumping around a little bit. That's the second
9	12:29	exhibit, the email that appears to come from you at your law
10	12:29	firm dated March 25th. You indicated in that email that under
11	12:29	the purchase agreement, the fund was obligated to pay solutions
12	12:29	for mobile solar units. Did you make that statement?
13	12:29	A. On advice of counsel, I'm invoking my Fifth Amendment.
14	12:29	Q. Did somebody write that statement for you?
15	12:29	A. On advice of counsel, I'm invoking my Fifth Amendment
16	12:29	right.
17	12:29	Q. Mr. Strauss, how many mobile solar units were, in fact,
18	12:29	delivered under any purchase agreement entered into between the
19	12:29	fund and any third party?
20	12:29	A. On advice of counsel, I'm invoking my Fifth Amendment
21	12:29	right.
22	12:29	Q. Mr. Strauss, what action did you undertake to ensure that
23	12:30	any mobile solar units had been delivered?
24	12:30	A. On advice of counsel, I'm invoking my Fifth Amendment
25	12:30	right.

29

STRAUSS - CROSS-EXAMINATION

1 Q. What action did you take whatsoever, Mr. Strauss, to
2 ensure that any of the wire transfers out of the \$5 million
3 sent to your Iolta account were proper?
4 A. On advice of counsel, I'm invoking my Fifth Amendment
5 right.
6 MS. SHOUN: Beg the Court's indulgence just one
7 moment.
8 (Pause.)
9 MS. SHOUN: Your Honor, if I may approach the
10 witness?
11 THE COURT: You may.
12 BY MS. SHOUN:
13 Q. Mr. Strauss, I'm going to hand to you what appears to be
14 an email sent from Peter Strauss at
15 pstrauss@thetrausslawfirm.com to Armando Gomez on March 27th,
16 2019 at 12:58 p.m., and I'll ask you if you recognize that
17 email.
18 A. On advice of counsel, I'm invoking my Fifth Amendment
19 right.
20 Q. Mr. Strauss, why would -- to what letter are you referring
21 in that email to Mr. Armando, that you indicate that you have
22 just received a letter? Which letter would that be?
23 A. On advice of counsel, I'm invoking my Fifth Amendment
24 right.
25 Q. Could that be the follow-up letter from our -- from Nexsen

30

STRAUSS - CROSS-EXAMINATION

1 Pruet on behalf of the fund again asking you for an accounting
2 as to the money?
3 A. On advice of counsel, I'm invoking my Fifth Amendment
4 right.
5 Q. Did you receive a response from Mr. Gomez?
6 A. On advice of counsel, I'm invoking my Fifth Amendment
7 right.
8 MS. SHOUN: Your Honor, the -- I don't know that the
9 witness identified the document, but we would ask that it be
10 admitted. We move it be admitted.
11 THE COURT: That's number 3?
12 MS. SHOUN: Yes, sir.
13 THE COURT: Is there an objection?
14 MR. OVERSTREET: Without objection.
15 MR. WOOTEN: Your Honor, I apologize. Patrick Wooten
16 again on behalf of some of the transferees. I don't know what
17 documents are being passed around, but it sounded like these
18 may be privileged documents. Maybe these are documents where
19 third parties are on the -- but I just want to make sure our
20 privilege objections are preserved.
21 THE COURT: Of course you're not a party to this
22 proceeding. You're a recipient. I'm going to give you every
23 chance to be heard on matters. The -- it appears to me that --
24 and this was raised by Mr. Overstreet earlier. It appears
25 these documents in which he is -- he is receiving funds and

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STRAUSS - CROSS-EXAMINATION

1	12:33	he's distributing funds, he's working as an escrow agent. He's
2	12:34	just like a bank. He's not functioning as a lawyer at the
3	12:34	time, and those would not be privileged. These are escrow
4	12:34	payments. So -- but I note your objection for the record.
5	12:34	Yes, sir?
6	12:34	MR. OVERSTREET: Your Honor, very briefly, just so
7	12:34	that the record is clear. I appreciate your noting the fact
8	12:34	that I also had some concerns about turning all this
9	12:34	information over that could have privileged implications, and I
10	12:34	provided to opposing counsel and the Court a notebook of
11	12:34	emails, which my understanding is Your Honor has reviewed and
12	12:34	come to the conclusion that there aren't any privileges
13	12:34	associated with those communications, thus allowing me to
14	12:34	produce it in full court.
15	12:34	THE COURT: Right. They -- my review of the
16	12:34	documents indicated that they were simply a processing of cash
17	12:34	through the escrow account of the Strauss Law Firm, and that he
18	12:34	was serving as an escrow agent, and that that would not be
19	12:35	subject to privilege. So I did review those, and I ruled they
20	12:35	were -- they were not protected by privilege.
21	12:35	Okay. Anything further?
22	12:35	MS. SHOUN: Just a couple more, Your Honor, if the
23	12:35	Court will allow.
24	12:35	BY MS. SHOUN:
25	12:35	Q. Mr. Strauss, were you ever acting pursuant to some escrow

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STRAUSS - CROSS-EXAMINATION

1	12:35	agreement with the fund?
2	12:35	A. On advice of counsel, I'm invoking my Fifth Amendment
3	12:35	right.
4	12:35	Q. Mr. Strauss, were you or your law firm ever -- and I'm
5	12:35	sorry. In the previous question, that should have applied to
6	12:35	you and your law firm, just so we understand. Is that fair?
7	12:35	Same answer?
8	12:35	A. Yes.
9	12:35	Q. All right. Did you or your law firm ever act pursuant to
10	12:35	any agreement as an escrow agent for DC Solar Solutions?
11	12:35	A. On advice of counsel, I'm invoking my Fifth Amendment
12	12:35	right.
13	12:35	Q. Did you or your law firm ever act pursuant to any sole --
14	12:35	any escrow agreement on behalf of Paulette and/or Jeffrey
15	12:35	Carpoff?
16	12:35	A. On advice of counsel, I'm invoking my Fifth Amendment.
17	12:35	Q. Mr. Strauss, what action did you undertake to ensure that
18	12:35	any of the wires out of your Iolta account of that \$5 million
19	12:36	were proper?
20	12:36	A. On advice of counsel, I'm invoking my Fifth Amendment
21	12:36	right.
22	12:36	MS. SHOUN: Very quickly, Your Honor.
23	12:36	(Pause.)
24	12:36	MS. SHOUN: That's all I have, Your Honor. Thank
25	12:36	you.

STRAUSS - CROSS-EXAMINATION

1 THE COURT: Any questions from the defense?
2 MR. OVERSTREET: No, Your Honor.
3 THE COURT: You may step down, sir.
4 THE WITNESS: Thank you.
5 (witness excused.)
6 THE COURTROOM DEPUTY: Sir, may I have those
7 documents? Thank you.
8 THE COURT: Mr. Strauss, I'm going to put you on
9 notice that I intend to advise the South Carolina Supreme Court
10 that you took the Fifth Amendment today in a matter involving
11 potential criminal activity, and I would suggest you
12 self-report your appearance here today and your actions.
13 Let me address if I might and hear from some of
14 the recipients. I know you have an active interest here, and
15 you've had very little time to address these issues. My goal
16 is to preserve the status quo in a way that preserves these
17 funds to make a determination of who is the rightful owner of
18 these and whether or not it's within the DC solar bankruptcy.
19 I don't know the answer to that. I'm working that through.
20 On the record, I want to say that I have been in
21 touch with Judge Beesley in the Nevada Bankruptcy Court, and
22 we're working in concert with each other on this. There's no
23 interest of this Court of usurping the important rights of the
24 Bankruptcy Court and the rights of the creditors in bankruptcy.
25 On the other hand, to the extent these monies are outside the

1 estate of the bankruptcy, then it's my responsibility to
2 address the claims here. That's as simple as I can make it.
3 I want to afford everyone an opportunity to have
4 the time to review these issues. I have a -- I presently have
5 an issue, the TRO, and have extended it to the recipients, and
6 the question then is -- and I'm trying to maintain the status
7 quo. Does anyone while we're sorting this out have an
8 objection to the continuation of the TRO? Let the record show
9 no one has responded. The TRO is going to continue.
10 I want to afford the recipients an adequate time
11 to investigate this matter. I've had issues raised. I've now
12 gotten two responses in. One I haven't -- I'll be candid with
13 you -- from a Mr. Bakondi, I have not had a chance to review.
14 It arrived just moments before the hearing. I did receive one
15 earlier today from Mr. Wooten. And Mr. Wooten, let me tell you
16 a piece of information I'm interested in, and perhaps you might
17 have -- help us on this or provide -- or you might be able to
18 answer this question at a later point if you don't know it now.
19 I'm trying to reconstruct how the monies left Fund XXXV and
20 ended up in the Strauss Law Firm. Did it pass through any
21 other accounts? Who moved -- who gave the instructions from
22 the fund's bank to transfer these monies to the Strauss Law
23 Firm? How did the Strauss Law Firm characterize these funds in
24 its own accounts? That is, who was the owner in this -- the
25 Strauss Law Firm identified as the owner of these funds?

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1 Those are issues that go to whether this was
2 actually an asset of DC Solar. I note that DC Solar did not
3 list Fund XXXV as one of its 20 top creditors, and it surely
4 would have been should the \$5 million had been -- if the \$5
5 million had been paid and services not delivered, it would have
6 been a debt, and it was not listed. Has there since then been
7 a filing, a listing of assets by the -- by the debtor? Has
8 there been a filing in Bankruptcy Court of assets?
9 MR. WALLACE: Your Honor, Bruce Wallace for the
10 plaintiffs. We do not believe so.
11 THE COURT: I have not identified it on ECF. So the
12 fair question is number 1, is this an asset of DC Solar? And
13 even if it is, it doesn't ultimately dispose of the issue of
14 who is entitled to these funds. I mean, that needs to be
15 sorted out, about the role of these various law firms, and they
16 have had an understandable interest in keeping the monies they
17 have received. The Court's concern is are these -- did they
18 receive funds acquired by conversion? And if so, did they know
19 or should have known that these were of questionable origin?
20 We know that the day before the transfer, the
21 Federal Government had seized the accounts, all the accounts of
22 DC Solar. So I'm not sure how it could have flowed into a DC
23 Solar account. Perhaps there are some that the Government
24 didn't know about, but I'm trying to sort all that out.
25 I understand the argument ably made by

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1 Mr. Wooten and his law firm that -- that the funds from -- in
2 the accounts of Fund XXXV were payable, but were they paid by
3 the fund? That's different. Was it paid and -- for those
4 mobile solar generators? Or did someone not yet identified
5 reach into those accounts, perhaps improperly, and convert it
6 to their own use? Pretty important question here.
7 Now, even after all of that, the question about
8 who sorts that out, whether we're subject -- whether these
9 funds are subject to the -- are subject to the bankruptcy is
10 something I intend to continue my dialogue with Judge Beesley
11 and the fact finding I'm trying to do here.
12 I think we ought to have an evidentiary hearing
13 at some point for -- to try to answer these questions as
14 definitively as we can. And, Mr. Overstreet, could we -- I'm
15 going to enter an order requiring the Strauss Law Firm to
16 produce to me documents showing how this \$5 million was treated
17 in its account, how it was designated in the account. Do you
18 understand what I'm asking?
19 MR. OVERSTREET: Yes, sir.
20 THE COURT: And I think that will give us one piece
21 of information. I think it is important to determine how --
22 who gave the instructions that the money leave the fund and go
23 to the Strauss Law Firm. There was a -- I understand -- was
24 that a wire I saw on a bank account? Was that a wire transfer,
25 Ms. Shoun?

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1	12:44	MS. SHOUN: Into the Strauss Iolta?
2	12:44	THE COURT: Yes.
3	12:44	MS. SHOUN: Yes, sir, Your Honor.
4	12:44	THE COURT: From?
5	12:44	MS. SHOUN: As I understand it, it was from Paulette
6	12:44	Carpoff, Your Honor. And I may --
7	12:44	THE COURT: From Paulette Carpoff personally?
8	12:44	MS. SHOUN: Yes, sir. I may be able to actually --
9	12:44	if the Court will give me one minute, I may be able to produce
10	12:44	a copy of that for Your Honor.
11	12:44	THE COURT: Okay. You may take a moment.
12	12:44	(Pause.)
13	12:44	MS. SHOUN: May I approach, Your Honor?
14	12:44	THE COURT: You may. Do we know, Ms. Shoun, why
15	12:45	Ms. Paulette Carpoff would have authority to move money out of
16	12:45	the -- of an independent, freestanding fund, investment fund?
17	12:45	MS. SHOUN: No, sir.
18	12:45	THE COURT: I have not been provided a copy of any --
19	12:45	I know I have the -- this equipment sales agreement and a note.
20	12:45	Do we have an LLC organizational document?
21	12:45	MS. SHOUN: Yes, sir.
22	12:45	MR. WALLACE: Just one second, Your Honor.
23	12:45	MS. SHOUN: We have -- I think we have a copy, Your
24	12:45	Honor, an extra copy. If Your Honor doesn't mind, I think we
25	12:45	probably printed it on two-sided pages.

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1	12:45	THE COURT: I can survive that.
2	12:45	MS. SHOUN: Okay. If I may approach.
3	12:46	THE COURT: I want to -- I want everybody to be on
4	12:46	the same page here, and I want the plaintiff to provide to the
5	12:46	nine recipients the documents we're talking about here. I
6	12:46	think they need access to this.
7	12:46	MS. SHOUN: Certainly, Your Honor.
8	12:46	THE COURT: I want to make sure they have -- and to
9	12:46	the extent when we have a hearing, I will say to the
10	12:46	recipients' counsel, we'll have a deadline for you to produce
11	12:46	to the parties any documents that may shed some light on this.
12	12:46	It may be worthwhile if you don't have -- you
13	12:47	have not yet done this, is to perhaps depose the bank official
14	12:47	involved to figure out exactly what happened.
15	12:47	MS. SHOUN: Yes, sir.
16	12:47	THE COURT: Do we know whether Paulette Carpoff has
17	12:47	any role with Investment Fund XXXX?
18	12:47	MS. SHOUN: She does not. Any knowledge we have of
19	12:47	this fund, Your Honor, she does not. This fund was entered
20	12:47	into -- or this fund was created, if you will, the LLC was
21	12:47	created in late November of 2018, and then, of course, this
22	12:47	raid upon the Carpoffs and the DC Solar entities was made on
23	12:47	December 18th. There was no representation that the Carpoffs
24	12:47	were involved, and, in fact --
25	12:47	THE COURT: wasn't there a provision about

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1 12:47 independence? There would be a fiduciary issue; would there
2 12:47 not be?
3 12:47 MS. SHOUN: Your Honor, Section 3.145 -- V. Oh, it's
4 12:47 V. Sorry.
5 12:47 THE COURT: Three point --
6 12:48 MS. SHOUN: 3.14V, as in victory.
7 12:48 THE COURT: Thank you. Give me a second. "The
8 12:48 managing member is not an affiliate of the sponsor. The
9 12:48 managing member has not entered into any contract agreement,
10 12:48 understanding, or arrangement with the sponsor, any affiliate
11 12:48 of the sponsor relating to mobile solar facilities other than
12 12:48 the transaction documents."
13 12:48 So I want everyone to sort of understand where
14 12:48 I'm going here. I'm just trying to figure out was this some
15 12:48 kind of regular transfer of a financing relating -- funds
16 12:48 relating to an equipment sale in the ordinary course of
17 12:48 business, or was this -- which is suggested by the recipient
18 12:49 filing I've had -- or was this an irregular transaction
19 12:49 facilitated by someone with no authority to take the funds, and
20 12:49 that the funds were essentially a conversion for the personal
21 12:49 use of the person who took the fund?
22 12:49 MS. SHOUN: Of course, Your Honor. And we would --
23 12:49 THE COURT: That is to me the question, and I don't
24 12:49 want to suggest for a moment -- I don't have any suggestion
25 12:49 that any of these recipients would have been involved in that

1 12:49 end of the transaction, but if, in fact, these are converted
2 12:49 funds, then -- and are not funds of DC Solar, then why would we
3 12:49 not be here to sort this out? I mean, if they are, I think
4 12:49 they should be in Nevada. I think that's exactly where they
5 12:49 should be, if they're assets of DC Solar. There might be other
6 12:50 arguments why they are assets of DC Solar, but I do think
7 12:50 having looked at the sales agreement, those funds were payable,
8 12:50 but not paid. I mean, no one had a right to snatch the money
9 12:50 out of the fund.
10 12:50 I do think, Ms. Shoun, it would be helpful to
11 12:50 know more about exactly the instructions that the CTBC Bank
12 12:50 had --
13 12:50 MS. SHOUN: Yes, sir.
14 12:50 THE COURT: -- and what authority it had --
15 12:50 MS. SHOUN: Yes, sir.
16 12:50 THE COURT: -- to transfer those funds to the Strauss
17 12:50 Law Firm.
18 12:50 MS. SHOUN: Yes, sir.
19 12:50 THE COURT: I think that is a missing piece here
20 12:50 that -- we see here it is from Paulette Carpoiff. I presume
21 12:50 she, like Mr. Strauss, is going to take the Fifth, so you're
22 12:50 not going to get it from her, but the bank should have some
23 12:50 documentation of its authority, and if there is some authority,
24 12:50 then we need to know about that.
25 12:50 MS. SHOUN: Yes, sir.

1 THE COURT: If it's some legitimate authority to act
2 on behalf of the fund or some other instructions they have a
3 right to go grab the money on behalf of Solar -- DC Solar, but
4 MS. Carpoft is not -- is a different -- is an individual, and
5 DC Solar is a corporate entity.
6 MS. SHOUN: Exactly, Your Honor. And one reason we
7 directed Your Honor's attention to that particular section
8 mentioned earlier, and then the 3.17 as well, 3.17M, where
9 actually, Your Honor, there were affirmative representations
10 that there was no affiliation with the sponsor, and the sponsor
11 being the DC solar entity.
12 THE COURT: I would think it would present serious
13 fiduciary issues if they're merged.
14 MS. SHOUN: Exactly.
15 THE COURT: They're supposed to be an arm's length
16 transaction.
17 MS. SHOUN: Yes, sir.
18 THE COURT: And -- but I want to afford everyone an
19 opportunity to be heard, and I'm not -- I'm not trying to make
20 any rush to judgment here. I do think we need to set up a
21 mechanism where we can make certain reasonable factual
22 findings.
23 MR. Wooten, you got any suggestion how much time
24 you folks might need?
25 MR. WOOTEN: We were asking for like 10 days. You

1 know, I -- we obviously hadn't heard Your Honor's comments when
2 we submitted that, but --
3 THE COURT: I'm trying to focus you on where, you
4 know, I think the issue is here.
5 MR. WOOTEN: Right.
6 THE COURT: And I will say I don't think we all have
7 a definitive answer yet about where it is, but if there are
8 funds out there that were unlawfully taken and converted and
9 then distributed to third parties, that's a -- that's not a
10 DC -- that's not a DC Solar issue if it never passed through DC
11 Solar, never had a purpose of being related to DC Solar. It
12 was simply a conversion by some person or entity other than DC
13 Solar. Then that doesn't answer the question of the
14 entitlement of these nine recipients. That's a whole 'nother
15 issue. We'd have to sort that out, but -- but they would be --
16 you know, they would have been paid with -- if that scenario is
17 correct -- with stolen money. And the question is do they know
18 or have reason to know that there was some question about those
19 funds, particularly in light of the fact that the day before
20 the Federal Government had acted to seize all accounts?
21 Yes, sir. You wish to speak?
22 MR. ALLEN: Yes, sir, Your Honor. Just from a timing
23 point of view, I start a trial on Friday in State Court. I'll
24 be in trial all week at least, so from a timing point of view,
25 I would ask for at least 15 days to be able to respond.

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1 But I've also got some -- the other concern I've
2 got is that any knowledge that might be imputed to Strauss Law
3 Firm that therefore may be imputed to Hamilton Captive
4 Management LLC. The problem that comes -- the stolen funds
5 question we've got is really that this fiduciary issue doesn't
6 belong here, because the money was transferred from a bank
7 that's not -- has no association with any of the parties that
8 are defendants in this case. We think the plaintiffs should be
9 in the best position to know that information, as to whether or
10 not they were -- where they were transferred from and who had
11 -- it's their account.

12 THE COURT: Let me say, I would say under normal
13 circumstances that you are absolutely correct, but they get
14 a -- they learned subsequently that someone has taken \$5
15 million out of their account, someone who doesn't have the
16 authority to do that.

17 MR. ALLEN: Who's not a defendant here in this action
18 is the problem.

19 THE COURT: Correct, but who has taken the money and
20 delivered it to the Strauss Law Firm, and they brought an in
21 rem action for their \$5 million. And what you do there is you
22 bring all the claimants in, and you sort it out. And I don't
23 know whether the plaintiffs' assessment of the facts is
24 correct. I just don't know the answer to that. And -- but I
25 think it's an important issue, and I want to afford everyone

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1 the opportunity, all nine recipients -- you know, many of them
2 are across the country and so forth. I want to afford
3 everybody an opportunity to make a reasonable inquiry to
4 determine the provenance of these funds.

5 And once we sort that issue out, we got to sort
6 out is that subject to the bankruptcy estate? Is that part of
7 DC Solar? And -- and we'll have to sort out who should decide
8 that. I think both -- if that were true, the Bankruptcy Court
9 and District Court would have potentially concurrent
10 jurisdiction to determine that. The question is who should do
11 it? And I want to just discuss that with Judge Beesley. I
12 want to sort it out, but I want to know the facts first,
13 because the facts may establish that it is unquestionably a DC
14 Solar asset. I just don't know right now. I certainly have
15 had facts that raise a lot of concerns that there was something
16 untoward here. Now, whether that is, in fact -- when we
17 actually sort it all out that's true, but there's certainly
18 enough here -- as they say, where there's smoke, there may be
19 fire. I want to see if there's actually fire here.

20 MR. ALLEN: The concern from Hamilton Captive
21 Management's request from Your Honor is this. It's now going
22 to be accused because of the role of Mr. Strauss in his role
23 with Captive Management. Mr. Strauss in his attempts to
24 cooperate obviously has to do so under his own entities there,
25 and in doing so, there was some questions whether or not we

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1 would be cooperating, basically putting everything on hold.
2 And I'm here to represent we'll be more than happy to do that
3 in cooperation --
4 THE COURT: What I'm trying to do is -- I understand
5 that the Strauss Law Firm is prepared to pay to the Court, a
6 pretty reliable place to put money -- the 1.5 million received
7 while we sort this out.
8 NOW, these other law firms, I want -- these
9 other folks, I want to sort out from them, hear from them about
10 things before I -- and that's why I said if you don't object to
11 the TRO continuing, there's not an objection, otherwise I'm
12 going to issue an injunction, because I'm trying to preserve
13 those funds while we have time to figure this out.
14 MR. ALLEN: It directly affects 150 other
15 corporations as it relates to Hamilton Captive Management,
16 because those funds were in the normal course of business.
17 They were purchasing an insurance contract that was
18 administered. It was bound, and so the reality is that I need
19 an order of the Court to be able to do that is all I was
20 putting on the record.
21 THE COURT: I'll give you an order.
22 MR. ALLEN: Thank you, Your Honor.
23 THE COURT: I'll provide you the order.
24 MR. WOOTEN: Mr. Wooten, do you have any thoughts?
25 MR. WOOTEN: Yes, I do. I guess as far as the amount

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1 of time, the more time you can provide us, the better.
2 THE COURT: I'm thinking 30 days frankly. I just
3 think everybody needs a little bit of time to catch their
4 breath here. If there's not an objection to the continuation
5 of the TRO, otherwise I'm going to issue an injunction. That's
6 why -- the lawyers are here representing about half of these
7 recipients. I don't mind issuing a preliminary injunction
8 unless -- if the parties object to the continuation of the TRO.
9 MR. WOOTEN: And so the order Your Honor would enter
10 would be one that says essentially the same thing that the
11 order issued the other day did --
12 THE COURT: Don't spend the money. Don't transfer
13 it. I'll make a determination later whether you're going to
14 have to pay it into the Court.
15 MR. WOOTEN: Okay. I just -- one concern I have
16 frankly, Your Honor, is I've not had this situation come up
17 before where a client is not a party, you know, not served with
18 process, and then comes just sort of as an invitee to a
19 hearing, and we're being asked obviously about an order that
20 would affect their interests, and so I don't want to waive any
21 objections. Like you said, I want to catch my breath, and so I
22 want -- I do want to object to any attempt to exercise
23 jurisdiction over these clients --
24 THE COURT: Does your client intend to honor my
25 order?

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12:59 1 MR. WOOTEN: My --

12:59 2 THE COURT: Your client regarding the maintenance of

12:59 3 the funds, do they intend to do that?

12:59 4 MR. WOOTEN: Yes. Your Honor, we -- we are willing

12:59 5 to -- here's what I will say. I don't want to say we intend to

12:59 6 honor it if doing that results in some sort of waiver.

12:59 7 THE COURT: You're not waiving anything. I'm trying

12:59 8 to maintain the status quo to give your client the chance

12:59 9 you've asked for to explain it.

12:59 10 MR. WOOTEN: Right.

12:59 11 THE COURT: And give you enough time to actually

12:59 12 figure it out.

12:59 13 MR. WOOTEN: Right.

12:59 14 THE COURT: You're trying to figure this out. You

12:59 15 don't know much more than I do, Mr. Wooten. I mean, we all --

12:59 16 that's very clear. All of us are struggling to figure out what

12:59 17 the facts are. We need time to figure this out. I can't have

12:59 18 these funds transferred away, expended while we're trying to

01:00 19 figure it out. I'm going to preserve it. I think I've heard

01:00 20 enough to say there's something perhaps untoward happening

01:00 21 here, and it appears to me that it is important to preserve the

01:00 22 status quo while we figure it out, protect everybody's rights

01:00 23 here. That's all I'm trying to do.

01:00 24 MR. WOOTEN: Okay. Well, so in light of that, Your

01:00 25 Honor, I would agree that our clients will maintain the status

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01:00 1 quo with respect to the money that they have, but not waiving

01:00 2 any objections --

01:00 3 THE COURT: Nobody is waiving any -- including

01:00 4 jurisdiction right at this moment. All I'm doing is preserving

01:00 5 the money to figure it out, and then somewhere these law firms

01:00 6 are going to have to deal either with me or the bankruptcy

01:00 7 judge about the -- their entitlement to funds. To the extent

01:00 8 it's an asset of DC Solar, that's one issue. If it's stolen

01:00 9 funds, then you get to the issue of did they know or should

01:01 10 have known, kind of holder in due course, all those issues that

01:01 11 need to be sorted out. And I want to -- I'm going to assure

01:01 12 that if I'm the one deciding that, I'm going to give everybody

01:01 13 a full opportunity to be heard and a full opportunity to

01:01 14 investigate the facts.

01:01 15 MR. WOOTEN: So if I can just ask one question -- and

01:01 16 I normally wouldn't ask a question to the Court, but my

01:01 17 understanding is that there was, you know, this last minute

01:01 18 memorandum that we submitted to the Court.

01:01 19 THE COURT: Yes.

01:01 20 MR. WOOTEN: And in that document, East West Bank is

01:01 21 authorizing this 13 million some odd dollars to go to -- or to

01:01 22 go from the fund to DC Solar.

01:01 23 THE COURT: It's actually authorizing it to paying it

01:01 24 into the -- into the investment fund. That's how I understand

01:02 25 it, and then the manager of the fund needs to transfer it.

1 That's an extra step. Ms. Carpoﬀ does not have, the best I
2 can see, the authority to reach into the supposedly independent
3 investment fund and to take the money. There's an extra step
4 there. I've been trying to sort out did the manager do that?
5 Did the manager reach in and transfer it to Ms. Carpoﬀ? I
6 don't know the answer to that. But I have not -- I know that
7 the Nexsen Pruet law firm wrote the manager, who in a sort of
8 bewildering thing never wrote back. I mean, you're supposed to
9 be managing a fund, and \$5 million is missing, and you don't
10 respond to your client, to the investor, the principal investor
11 in the fund? How would that be? And so that raises questions
12 about what is actually going on there?
13 And so I think we need to figure out was that --
14 though the funds were -- were potentially payable at that
15 point, were they actually paid, and what are they going to be
16 paid for? They're for 325 solar generators. At this moment,
17 DC Solar has shut -- literally shut the lights off. They've
18 laid off their staﬀ. All their accounts have been ceased.
19 There's no way in the world they're ever going to perform.
20 This is not a normal equipment sale at this point. But if the
21 monies went into DC Solar, that would be one thing. You could
22 say, "Well, still you had this contract," but if it went to a
23 third party, and it was just snatched out of that account by
24 someone who has no right to do it, that is a very diﬀerent
25 situation, and whether that is exactly what happened here, we

1 need further -- we need further evidence.
2 I know the plaintiffs assert that. Is that
3 fair, Ms. Shoun, that you're asserting that basically
4 Ms. Carpoﬀ took the money?
5 MS. SHOUN: We know -- what we know, Your Honor, has
6 been presented to this Court, and that is that -- quite
7 correctly the Court states that the authorization was for this
8 investment to be paid into fund, and that investment was paid
9 into fund. Then on the 18th of December, essentially
10 everything was frozen, seized by the Federal Government. No
11 mobile solar units were delivered. Then subsequently after
12 filing this action, we found that wire transfer made by
13 Ms. Carpoﬀ directly into the Iolita account.
14 THE COURT: Mr. Wooten, have you been provided a copy
15 of this wire transfer?
16 MR. WOOTEN: Not that I know of.
17 THE COURT: I mean, this is why it's important that
18 you -- that we get everybody on the same page. I'm going to
19 send an order kind of -- I want the recipients to get all this
20 information, because --
21 MS. SHOUN: Yes, of course, Your Honor.
22 THE COURT: And then the recipients may have
23 information themselves relevant to you, and -- but I'm trying
24 to sort out how this money got moved from the fund to the
25 Strauss Law Firm. I think that is a very material thing, and

1 did it -- was it transferred to DC Solar in some way? I have
2 trouble imagining how that could have occurred, because DC
3 Solar was defunct at that point, literally defunct. The lights
4 were out, the staff was laid off, and all its accounts were
5 seized by the Federal Government.
6 MS. SHOUN: The day before the wire transfer took
7 place.
8 THE COURT: Literally the day before the wire
9 transfer.
10 MR. WOOTEN: And, Your Honor, one thing I'm not clear
11 on though is the -- this cash flow memorandum. My
12 understanding is that the East West Bank is not merely signing
13 this document authorizing --
14 THE COURT: They're the investor. They're an
15 investor into the fund. The fund holds the money to transfer
16 to DC Solar. The East West Bank is the investor.
17 MR. WOOTEN: Right.
18 THE COURT: So they've transferred -- as I understand
19 the documents -- and I'm prepared to be instructed otherwise
20 here -- is that as part of this agreement, East West Bank paid
21 into the fund monies for them to be transferred to DC Solar by
22 its manager to pay for 325 solar generators. Instead of the
23 manager -- this is what plaintiffs essentially showed by this
24 document. Instead of the manager, Halo Management, exercising
25 its authority to make that transfer, Mrs. Paulette Carpoiff took

1 the money and transferred it to the Strauss Law Firm, and then
2 it was distributed what appears to be for the personal use of
3 the Carpoiffs. That might be -- not saying it is -- potentially
4 a conversion of that money and not a -- so that's why I said
5 was this was a regular transaction, as you describe it in your
6 pleading, or is it an irregular one in which the action is
7 untoward?
8 I don't think it's fair -- I mean, I'm not
9 jumping on you, Mr. Wooten, because you don't have all the
10 facts, and I'm not sure any of us have all the facts, and we
11 need all those facts to sort this out, and I want to give
12 everybody enough time and enough opportunity to do it.
13 And I'm preparing as you look into it -- and I
14 say this for all the counsel for the recipients. If you -- if
15 you feel like you need discovery, talk to me about that. Let
16 me know that. I personally think that it may be useful for
17 someone to depose the folks at the bank.
18 MS. SHOUN: And, Your Honor, I was going to ask the
19 Court about that. We are happy to undertake that endeavor, but
20 to be frank with the Court, I'm not sure logistically how long
21 that would actually take. We are willing to undertake what we
22 need to do to present the facts sufficient to this Court to
23 make a determination as to where this needs to go.
24 THE COURT: I think it is important to know how --
25 what was the mechanism out of which and under which authority,

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1 whoever acted -- it indicates here it's Ms. Carpoft -- under
2 what authority did she have? what was the -- I mean, the bank
3 must have had some -- you would think, some notion about the
4 authority for her to move \$5 million out of an account she did
5 not own. what was their understanding? And maybe there will
6 be something that is very -- that indicates that she somehow
7 had the authority of DC Solar -- I don't know that -- to act as
8 an agent of DC Solar, but -- or -- I don't think she could act
9 as the manager, because that would violate the independence of
10 the manager.

MS. SHOUN: And the very terms of the agreement.

THE COURT: And the very terms of the agreement. It
just -- this is a little bit of a confounding -- and I will say
to Judge Beesley, it's confounding to him trying to figure out,
and putting all of this together.

MS. SHOUN: And frankly, Your Honor, there may be
occasions where -- again, I don't know what the Court
envisions, but we would like the opportunity again to pursue
additional discovery, and it may be directed to some of the
recipients as well as to --

THE COURT: Let's -- at this point, let's figure out
whether this is in the estate. I want to leave the recipients
out of it for that purpose right now.

MS. SHOUN: Yes, sir.

THE COURT: Let's figure out is this an asset or not

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1 of DC Solar? That's the first issue. And then if it's not, I
2 need then to decide am I really the one to decide it's not an
3 asset, or is that Judge Beesley's responsibility? I need to --
4 and I want to work collaboratively with the Bankruptcy Court on
5 this. And then to the extent that it is not an asset of DC
6 Solar, then we've got to sort out well, what right do these
7 recipients have to retain funds that were the property of
8 another person who had their funds converted?

Yes, Mr. Wooten?

MR. WOOTEN: One question I have is that going back
to the cash flow memorandum, my understanding is East West Bank
is not only authorizing the \$13 million payment to the fund.
They are also signing this document authorizing the fund to
transfer 12 million -- 12.5 million to DC Solar. And what I'm
wondering is is it disputed that the \$5 million is a portion of
the 12.5 that East West Bank is authorizing the fund to
transfer to DC Solar? Is that disputed in this case or -- that
would help me in talking to my clients.

MR. ALLEN: Which brings up another matter, without
any finding that there's actually been an inappropriate
conversion, how do we then seize the funds here that are in my
client's possession without finding that there is at least a
risk of even being converted? we don't know that the actual
original quote-unquote conversion was an inappropriate action
at this time. we're asking, you know, executives of the people

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1 that received these funds to testify regarding the receipt of
2 funds. We haven't even established there was an inappropriate
3 conversion.
4 THE COURT: Well, we got somebody who doesn't appear
5 to have any right to do it taking the money. I mean, that's --
6 that's at least a color -- there's a very strong indication.
7 So if you're objecting to it, file an objection, and I'll enter
8 a preliminary injunction, and I'll make a finding under the
9 appropriate standards. I believe there's a likelihood of
10 success that this was improperly taken. If you wish to object,
11 file an objection. I will then enter an order.
12 MR. WOOTEN: Well, and so I still --
13 THE COURT: All I'm trying to do is get control of
14 these funds so that -- and if these companies and law firms are
15 entitled to it, I'm certainly not going to mess with their
16 right to -- I will not -- I will not -- I certainly don't seek
17 to take any funds that are lawfully theirs.
18 I would just simply say if there was a
19 conversion and the circumstances are that all of these law
20 firms were fully aware of this Federal Court action a day or
21 two before, it's hard to understand how they would know or --
22 not know or have reason to know there might be something
23 questionable about these funds. That's the only question.
24 MR. WOOTEN: Well, and one comment, Your Honor, about
25 the recipients knowing or should have known -- should have

1 known about anything questionable is, you know, it's not like
2 it was a coincidence that there was this raid and then
3 immediately thereafter the recipients were hired or retained.
4 They were obviously hired in response to the -- you know, the
5 raid. And so the reason they needed -- these folks needed
6 lawyers like Skadden was because there was a raid. So --
7 THE COURT: Right, but Mr. -- but Mr. Wooten, if DC
8 Solar had hired two guys to go into a bank and rob it and then
9 paid the law firms -- kind of an absurd situation, you would
10 say -- surely they'd have reason to know that they could not
11 keep the money, right? I mean, we would agree with that.
12 Well, how about if they just did it by wire transfer? Instead
13 of having a firearm and two black masks when they go in, they
14 just wire transferred it by fraud. I don't know if that's the
15 case or not. I really don't. I'm just saying to you that
16 there are questions here that need to be answered, and I would
17 think the analysis eventually would be were they holders sort
18 of in due course without notice, or did they have reason to
19 know? Because the question is who is properly entitled to
20 these monies, the one who had money stolen or the company that
21 perhaps knew or should have known that it came from a
22 questionable source?
23 I mean, where exactly would the Carpoiffs get
24 \$5 million if the Government seized all their money? I mean,
25 exactly where would that money come from? How would they have

1 it?
2
3 MR. WOOTEN: My understanding is that the Carpoiffs
4 had the Strauss Law Firm, who was their lawyer, wire the money
5 to these law firms, and so --
6 THE COURT: Doesn't look like he's acting as a
7 lawyer. Looks like to me he's just an escrow agent. He's
8 getting the money in. He's sending it out. That's a whole
9 'nother question about exactly what he's doing in his role.
10 MR. WOOTEN: Right. Well, Your Honor, I appreciate
11 the time to respond to this. And the only other comment I
12 wanted to make, I know I interjected during the
13 cross-examination, but I'm not clear on the documents that were
14 turned over, and I guess I am concerned about there being
15 emails with, you know, Skadden or these other clients of
16 ours --
17 THE COURT: They're all about wire transfers.
18 They're wire -- it's simply -- it's nothing -- I haven't seen
19 anything substantive at all in them. They're simply
20 facilitating the transfers, the wire transfers from the Strauss
21 account into their account. It's really a tracing device,
22 trying to trace where the money went. We didn't know that
23 until the other day where it went. The Strauss Law Firm had
24 not provided any information to the plaintiffs about what
25 happened to their money, and that was -- and this is in
furtherance of determining where that money went. I didn't see

1 anything in it in which any of the law firms expressed anything
2 that would be remotely attorney-client communications.
3 MR. WOOTEN: Your Honor, when -- Your Honor, you've
4 laid out what your -- the gist of your concern, and I think I
5 understand the information you're generally looking for, but
6 I'm wondering if it would be helpful for you to sort of set
7 forth, "Here's the information I would like to hear from the
8 recipients."
9 THE COURT: Yeah, I think I should do an order, and I
10 need -- you know, we're doing something a little out of the
11 ordinary here. I mean, we are. We're trying to sort out an in
12 rem action. I don't know how many of you do in rem actions.
13 It's not terribly common to be suing over \$5 million. I
14 usually have it when they're drug seizures, you know, that kind
15 of thing, and everybody is invited to come in and claim whose
16 money it is and that car they seized. Nobody wants to show up,
17 of course. And, you know, this is a little bit different.
18 I want to make sure we have an orderly process
19 that provides due process to everyone, and I'm trying to break
20 it down. Step one is the question being raised, was there
21 anything irregular about this? Was there? Was there some
22 question? Because I think if it is an asset of DC Solar,
23 everybody pack up and go to Nevada. You're going to sort it
24 out there.
25 If it's -- if it's not, I think you're likely

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1 going to stick around here and sort it out here. I mean,
2 that's sort of the way I view it.
3 And it may be that I will initially let -- have
4 Judge Beesley make that determination. I want to sort -- I
5 want to find out what the record shows us first, because we
6 just don't know -- we don't have enough information.
7 But this is a -- plaintiffs have raised a
8 legitimate question about how their money came from their
9 supposedly independent fund into the Strauss Law Firm by
10 Mrs. Carpo. If that, in fact, happened -- and we got a
11 document now that shows it -- exactly how did that happen?
12 MR. WOOTEN: And so Ms. Carpo had authority over
13 this account that was -- the fund's account somehow?
14 THE COURT: We don't think so. They don't think she
15 would have.
16 MR. ALLEN: That goes back to our original issue,
17 which is how is the jurisdiction not where she is to determine
18 whether or not that was an authorized transfer or not?
19 THE COURT: Because you're -- because Strauss is
20 here. Jurisdiction is here. The money arrived here. Got to
21 be somewhere. It passed out all around the United States.
22 Somebody's got to have it. You want to have us to go nine
23 different jurisdictions to figure it out? I don't think so.
24 Let's get to the merits here, folks. I want to
25 get to the bottom of this. I don't want all of us to waste a

1 lot of time on this. So step 1, we're not going to mess with
2 the recipients in terms of their entitlement to the money.
3 We'll save later whether -- we're going to sort out first
4 whether this is an asset of DC Solar or not.
5 Anyone else wish to speak?
6 MR. BARKER: Your Honor, again this is Jake Barker on
7 behalf of just one of the recipients, BH Venture Capital LLC.
8 While we are procedurally situated very similarly to
9 Mr. Wooten's clients, the factual reasoning behind why we're a
10 recipient, what our role was and our relationship to Solar is
11 quite different.
12 THE COURT: Tell me about that.
13 MR. BARKER: Well, Your Honor, BH Venture Capital is
14 an entity that was formed the purpose of acting as
15 debtor-in-possession lender in the DC Solar bankruptcy.
16 THE COURT: Okay.
17 MR. BARKER: My client and DC Solar executed a loan
18 term sheet through -- with the anticipation of providing
19 debtor-in-possession financing in that -- in the Nevada
20 bankruptcy.
21 THE COURT: And what happened to that?
22 MR. BARKER: For a variety of reasons --
23 THE COURT: Trustee objected.
24 MR. BARKER: The --
25 THE COURT: It was 3 million bucks, and trustee said

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1	no way.	01:20
2		01:20
3	MR. BARKER: The lending relationship did not	01:20
4	manifest.	01:20
5	THE COURT: Correct.	01:20
6	MR. BARKER: However, in the term sheet there is a	01:20
7	call for a payment of \$50,000 nonrefundable underwriting fee to	01:20
8	cover the costs for underwriting these loans.	01:20
9	THE COURT: Did your -- did your client -- was it	01:20
10	aware that all the accounts of DC Solar had been seized?	01:20
11	MR. BARKER: I believe at some point they were made	01:20
12	aware of it. I could not say --	01:20
13	THE COURT: And that the Carpooffs' personal accounts	01:21
14	had been seized and all the corporations had been seized?	01:21
15	MR. BARKER: I can't speak to their knowledge to	01:21
16	that.	01:21
17	THE COURT: And that 20 FBI agents had circled their	01:21
18	house and taken everything out of the house? You think they	01:21
19	might have known that since it was in all the newspapers out	01:21
20	there?	01:21
21	MR. BARKER: I could not tell you if they did or not.	01:21
22	THE COURT: Okay. I'm just saying your folks aren't	01:21
23	someone to just say, "oh, my God. These people might have done	01:21
24	something wrong." I mean, it's just a fair question about what	01:21
25	they -- you know, do they have reason to question where these	01:21
	monies came from?	01:21

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1		01:21
2	We've already given the hypothetical. How about if	01:21
3	two bank robbers where they took the money and took it to your	01:21
4	client, would you be entitled to it? And, of course, everybody	01:21
5	says, "No, of course not."	01:21
6	MR. BARKER: This is not some rogue action. We	01:21
7	applied within the Bankruptcy Court to be a	01:21
8	debtor-in-possession.	01:21
9	THE COURT: Of course. Of course, but I'm just	01:21
10	saying your entitlement to that \$50,000, your right to hold	01:21
11	that \$50,000 may turn on the origins of those funds.	01:22
12	I mean, I take it that was a -- who was your	01:22
13	client going to have a loan -- was it going to be with DC	01:22
14	Solar?	01:22
15	MR. BARKER: I believe so, yes, Your Honor.	01:22
16	THE COURT: And was anybody else going to be on the	01:22
17	loan other than DC Solar?	01:22
18	MR. BARKER: Well, I believe there's some related	01:22
19	entities in that bankruptcy, but I couldn't tell you.	01:22
20	THE COURT: Right, there are like eight different	01:22
21	entities.	01:22
22	MR. BARKER: I guess my point was --	01:22
23	THE COURT: Are the Carpooffs in bankruptcy	01:22
24	personally?	01:22
25	MR. BARKER: Sir?	01:22
	THE COURT: Are the Carpooffs in bankruptcy?	01:22

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1 MS. SHOUN: Not that we're aware, Your Honor.
2 THE COURT: Okay.
3 MR. BARKER: But to the matter at hand, Your Honor,
4 we again, like Mr. Wooten's clients, without waiving any of our
5 objections to jurisdiction and all of that, would think that
6 the time frame you kind of suggested with this kind of status
7 quo standstill order to kind of figure out where we are would
8 be helpful to us.
9 THE COURT: Yeah, I think what we need -- and I just
10 need to look at formally how to do this. I'm sort of
11 inclined -- let me ask these two captives, if I don't have you
12 pay it into the Court, can -- do you have any objection to
13 being subject to an injunction not to transfer the funds and to
14 hold it pending further action of the Court?
15 MR. ALLEN: We do not, Your Honor. The problem
16 simply is that we need some instruction. We'll fully
17 cooperate. That's all we need.
18 THE COURT: I hear you. I hear what -- you're being
19 perfectly reasonable about that. I'm just -- I'm just trying
20 to sort out a way in which -- in which we can get answers to
21 these questions without being unduly disruptive and without
22 dissipating the asset while we're litigating.
23 MR. ALLEN: My clients will cooperate and protect
24 those funds. We just want to make sure we're not stepping --
25 THE COURT: Let me ask the plaintiffs. I'm more

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1 inclined rather than making them pay into the fund simply to
2 require them to hold the funds in a secure account and not to
3 expend them. Do plaintiffs have any problem with that?
4 MS. SHOUN: Your Honor, I think that's the order
5 that's currently in place.
6 THE COURT: Yeah, it's currently in place. I had
7 anticipated perhaps adding in paid into the court, but I'm just
8 kind of wondering now whether that's a step that's really
9 necessary to make right now.
10 MR. ALLEN: We'll report where it is.
11 MS. SHOUN: Well, it may be, Your Honor, that at the
12 end of whatever time --
13 THE COURT: Oh, it will be if your client or the
14 Bankruptcy Court --
15 MS. SHOUN: That may be the period in which --
16 THE COURT: -- the trustee may want to take
17 possession.
18 MS. SHOUN: Exactly. Exactly.
19 THE COURT: Depending on what we determine it to be,
20 whether it's an asset of DC Solar or not.
21 MS. SHOUN: Right.
22 THE COURT: Okay. I'm going to set out an order of
23 discovery, of disclosure requirements.
24 MS. SHOUN: Okay.
25 THE COURT: I want all recipients to know.

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1 MS. SHOUN: Yes, sir.

2 THE COURT: Kind of everybody on the same page.

3 MS. SHOUN: Yes, sir.

4 THE COURT: So when we're handing up documents,

5 Mr. Wooten won't be saying, "what was that document?"

6 MS. SHOUN: Right.

7 THE COURT: I want everybody to have all the

8 documents.

9 MS. SHOUN: I didn't see it until this morning

10 myself.

11 THE COURT: Yeah, I understand that. And then

12 let's -- let's think about 30 days. If you need -- I will add

13 in the order that you have the authority to go depose --

14 MS. SHOUN: Perfect.

15 THE COURT: -- the folks at the CTBC Bank.

16 MS. SHOUN: Perfect.

17 THE COURT: Mr. Overstreet, you got something you

18 want to share with me?

19 MR. OVERSTREET: Very briefly, Your Honor. Just for

20 the record pursuant to my email to the Court last night,

21 Mr. Joe Griffith has been engaged by the Strauss Law Firm -- or

22 by Peter Strauss individually and apologizes that he can't be

23 here because he's out of the state, but intends to appear as

24 co-counsel with me.

25 THE COURT: Good.

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1 MR. OVERSTREET: And was involved in the prep of this

2 hearing, so I just wanted that to be on the record, Your Honor.

3 THE COURT: Well, Mr. Griffith is a fine attorney.

4 He practices in front of me regularly. I know him well.

5 Yes? Anything further?

6 MS. SHOUN: Well, just about a matter of

7 clarification, Your Honor. We are more than happy to provide

8 the documents, the relevant -- or what Your Honor sees as

9 relevant to every recipient. We're happy to do that. I just

10 want to make sure that I understand what Your Honor sees as

11 those.

12 We have the wire indication from Ms. Carpoiff.

13 We have what appears to be the wire receipt -- and I'm not a

14 bank lawyer, so I'm probably not using the right terminology

15 there -- where it went into the Strauss account. We have the

16 wire transfer forms that were provided by the Strauss Law

17 Firm's counsel on Monday. We're happy to distribute those if

18 the recipients don't have them.

19 THE COURT: Yeah, and I think these -- you know, the

20 LLC.

21 MS. SHOUN: The LLC operating agreement. The

22 purchase agreement.

23 THE COURT: The documents Mr. Wooten was talking

24 about with the page, the document with the funds, the -- the

25 equipment sales agreement.

1 MS. SHOUN: Purchase agreement, yes, sir.
2 THE COURT: I just think everything needs to be --
3 everybody needs to be on the same page, and then if everybody
4 knows that, then they can go find other information about,
5 "Hold it a minute. You think it's this, but it's actually
6 something else. It may look this way, but it's not." Then we
7 want to know that. We want to get it right. Nobody is -- you
8 know, this Court does not have a dog in this fight.
9 MS. SHOUN: Yes, sir.
10 THE COURT: I'm just trying to sort out the fair and
11 just disposition of this. It's either your client's funds, or
12 you're a creditor in the bankruptcy.
13 MS. SHOUN: Right. Exactly.
14 THE COURT: I mean, that's one of the two things.
15 And of course we know that part of the money also went to DC
16 Solar, the initial monies, and --
17 MS. SHOUN: And those are --
18 THE COURT: And those are -- it makes you a creditor
19 in the bankruptcy as to those. The question is is the
20 additional 5 million part of that.
21 MS. SHOUN: Exactly.
22 THE COURT: That's the only question.
23 MS. SHOUN: Your Honor, there may be information or
24 we have reason to believe there may be information in the hands
25 of some of the recipients, and I understand Your Honor's order

1 leave their entitlement as to these funds out of it now.
2 However, we have reason to believe there may be information in
3 the hands of some recipients that may help to answer this
4 Court's questions as to the flow of the monies, if you will.
5 THE COURT: Well, tell me exactly -- I mean, I'm most
6 interested how the money got out of the fund and into the
7 Strauss Law Firm.
8 MS. SHOUN: Precisely.
9 THE COURT: And if you think one of the recipients
10 had knowledge of that or played a role with that, that would be
11 important information, but you're going to have to make a
12 showing to me that they -- more than just saying, "I'm going to
13 do a little fishing expedition by starting to depose these
14 people." You're going to have to show me something first. I'm
15 not going to authorize that now, but if you have documents you
16 want to -- you want to make the point, what we're going to do
17 is you're going to make a motion, and I will let people respond
18 who may be affected.
19 MS. SHOUN: Okay.
20 THE COURT: And then I'll make a determination about
21 whether, you know, the -- let's be candid. To the extent your
22 hypothesis is correct, anybody involved in the transaction
23 potentially has criminal implications tied to them. If they're
24 actually involved in converting the funds --
25 MS. SHOUN: I see, Your Honor. Yes, sir.

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1 THE COURT: And I -- you know, I haven't seen any
2 indication up to this point that any of the recipients --
3 there's nothing you've shown me that suggests that.

4 MS. SHOUN: Exactly, Your Honor, but again, we have
5 this huge gap, as Your Honor has pointed out a couple of times,
6 as to how did it leap from fund to Carpoﬀ to Strauss. And we
7 at least have some documentation that it was in the fund, and
8 we have some documentation that Paulette Carpoﬀ somehow
9 managed to wire it out to Strauss, but other than what may be
10 in the documents presented to us this morning -- and frankly, I
11 haven't had an opportunity to look at all of those, as Your
12 Honor knows -- we don't know if there may have been some other
13 party involved in that gap.

14 THE COURT: Well, I want some indication before I
15 have you going after these law firms.

16 MS. SHOUN: Yes, sir. And we don't -- we're not even
17 at this point --

18 THE COURT: It looks like to me they're all being
19 retained. I think that was the point that was being made.
20 They were being retained in response to the federal action
21 which had occurred.

22 MS. SHOUN: The day before.

23 THE COURT: The day before. Okay? So, you know,
24 let's get to the bottom of that. Let's leave the recipients --
25 if you've got evidence to suggest the recipients may have been

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1 part of a conspiracy in that regard, I'd be glad to proceed,
2 but up to this point, I haven't seen that, and I'm not
3 authorizing a deposition. I'll put it in writing in an order.

4 MS. SHOUN: And, Your Honor, I don't think at this
5 point we would even anticipate maybe a deposition of any of the
6 recipients, but if they have -- again, if they would have
7 documents much like the Court ordered the Strauss Law Firm to
8 produce that would indicate the flow of that money --

9 THE COURT: Well, I haven't seen anything, but it
10 looks like to me what you've given me so far is I see the CTBC
11 Bank, which for the record is the holder of the funds for
12 the -- for the Fund XXXV.

13 MS. SHOUN: Yes, sir.

14 THE COURT: I see money going, landing at Strauss
15 from CTBC Bank --

16 MS. SHOUN: Yes, sir.

17 THE COURT: -- in a direct wire, and I see the name
18 of Mrs. Paulette Carpoﬀ in the middle it, a name that by
19 everything I know about shouldn't be there.

20 MS. SHOUN: Right.

21 THE COURT: That's all we know right now, and that
22 doesn't suggest to me any responsibility by any of these
23 recipients.

24 MS. SHOUN: Yes, sir.

25 THE COURT: I mean, that's just -- to me it's just a

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01:31 1 whole 'nother question.
01:31 2 MS. SHOUN: And it may be a question that Your Honor
01:31 3 or that Judge Beesley addresses later.
01:31 4 THE COURT: Somebody -- Judge Beesley and I are going
01:31 5 to have to figure out the entitlement of these recipients.
01:31 6 MS. SHOUN: Yes, sir.
01:31 7 THE COURT: But the first question is is this a DC
01:31 8 solar asset?
01:31 9 Okay. Anything further?
01:31 10 MS. SHOUN: Nothing from the plaintiffs, Your Honor.
01:31 11 THE COURT: From the defense?
01:31 12 MR. OVERSTREET: No, Your Honor. Thank you.
01:31 13 THE COURT: Very good.
01:31 14 MS. SHOUN: But thank you, Your Honor. You spent a
01:31 15 lot of time with us, and we appreciate the Court's analysis.
01:31 16 THE COURT: Glad to do it. We're going to figure it
01:31 17 all out before it's over and try to do a little justice. This
01:32 18 hearing is adjourned.
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2 CERTIFICATE
3 I, Tana J. Hess, CCR, FCRR, Official Court Reporter
4 for the United States District Court, District of South
5 Carolina, certify that the foregoing is a true and correct
6 transcript, to the best of my ability and understanding, from
7 the record of proceedings in the above-entitled matter.
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11 Tana J. Hess, CCR, FCRR, RMR
12 Official Court Reporter
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